Public Utilities

FORTNIGHTLY

January 5, 1939

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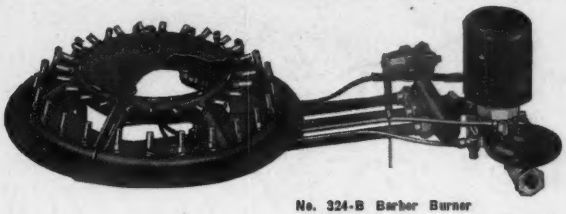

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Public Utilities Fortnightly

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Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

"HAPPY New Year and best wishes to all for 1939."

IN this holiday season when these words are on every tongue, including our own, the thoughtful man naturally thinks of his affairs in terms of accounting. He asks himself what changes have been wrought during the past year in his life, liberty, and general pursuit of happiness. What are the prospects for the coming year?

THUS the New Year is, in some respects, an anomalous season: a season of pride and of penitence, a season of hope and of hostage, a season of inauguration and of inventory, a season of new faith and of old desires renewed. For the utility industries certainly the dawn of 1939 is all of these things.

NOR will the passing of the troubled year of 1938 be greatly mourned by these industries. For it was only a few hours after the last New Year's day (January 4, 1938) that the Supreme Court handed down the decision which gave the Public Works Administration the constitutional green light to go ahead with the financing of competitive publicly owned utility projects. But at least the year 1938 witnessed the gradual clarification, if not the final solution, of problems which beset the utilities.

HERBERT COREY

Is the New Deal anti-utility crusade slowing down?

(SEE PAGE 3)

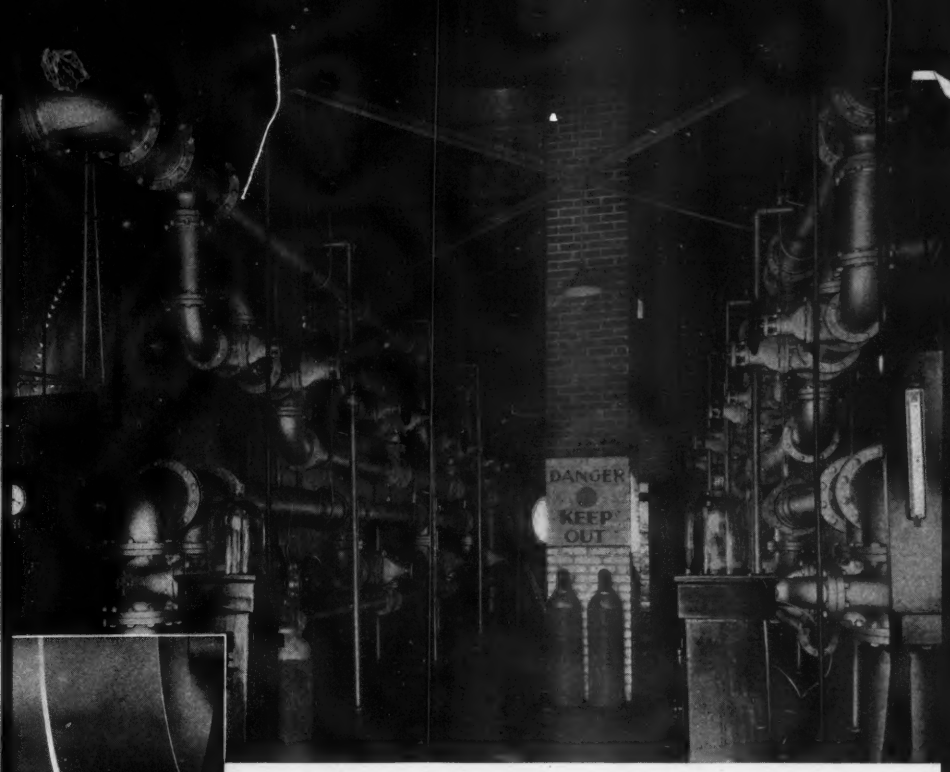
TULLY NETTLETON

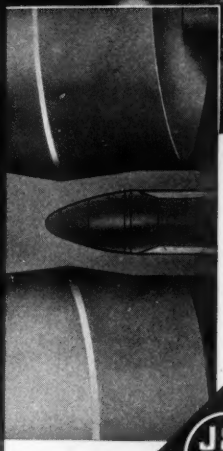
A compromise between utility equity and the mortgage bond may mean a valuation short cut.

(SEE PAGE 19)

THERE was the enactment of the Natural Gas Act of 1938. There was the decision of Congress to air the pent-up controversy over the TVA. There was the Supreme Court decision upholding the registration provisions of the Holding Company Act, and the more recent compliance with that act by the industry. There was the recognition by the administration itself that PWA should not finance competitive municipal power plants without discrimination. There was the Consolidated Edison decision which placed virtually all utilities under the jurisdiction of the National Labor Relations Board. There was the November election with its decidedly adverse effect upon the anti-utility bloc in Congress. Only a few weeks ago, the final major test of the TVA was argued before the highest court, which will probably hand down its decision thereon within a few days after New Year's.

BUT the year 1938 also brought to the utility industry new problems—some as yet not fully unfolded. The controversy within and about the Federal Communications Commission still awaits the inevitable showdown. The critical state of international relations, which even now





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mocks the traditional season of peace and good will, developed a national demand for military rearmament which bids fair to have some repercussion in the utility field. More spending, more taxes, more conflict in Washington—these are the prospects which attend the birth of the New Year.

AND so, while we again hope the New Year will prove a happy one for all, it is a dead certainty that it won't be a dull one. Needless to say, the editorial decks of PUBLIC UTILITIES FORTNIGHTLY are accordingly stripped for action. During the next twelve months we trust that we will bring to all our readers timely articles, penetrating analyses, and up-to-the-minute news and views on all passing developments affecting the utilities and their regulation.

STARTING off with this, our first issue of 1939, we present an article by our frequent contributor, HERBERT COREY, well-known Washington author and newspaper man. MR. COREY takes up for examination one of the very topics mentioned above—the possible effects of the new preparedness program upon the power industry of the United States. By reason of his considerable experience as war correspondent during the World War, MR. COREY brings to this discussion a background of journalistic understanding of military problems.

THE path of regulatory history in the United States is strewn with wreckage of those "short-cut" devices by which attempts were made to avoid the cumbersome process of physical valuation of utility property for rate-making purposes. Seemingly the Supreme Court has set its face against all rule-of-thumb formulae. However, there are those legal observers who detect in the most recent utility rate opinion (California Commission *v.* Pacific Gas & Electric Co., 58 S. Ct. 334, 21 P.U.R. (N.S.) 480) some disposition on the part of the Supreme Court not necessarily to approve of valuation short cuts, but at least to give regulatory commissions more liberty of action in determining their procedural technique, than the court allowed in the O'Fallon Case or in the more recent case involving a price index valuation of a Baltimore telephone company.

UNDER these circumstances, there may be some hope for a rather novel and ingenious rate case streamlining proposal described in this issue by its author, TULLY NETTLETON. MR. NETTLETON, a Washington editorial writer for the *Christian Science Monitor*, has been deeply interested in utility regulation ever since his student days at the University of Oklahoma, from which he graduated in 1923. This curiosity persisted while he covered the state capitals of both Oklahoma and Massachusetts as a reporter of the *Daily Oklahoman* and *Christian Science Monitor*, respectively. And now in Washington MR. NETTLETON has reached the conclusion that a short cut to rate valuation—the "perpetual motion" problem of regulatory inventors—is sound, feasible, and perfectly legal. You can judge for yourself after reading his explanatory article, beginning page 19.

RALPH B. COONEY

More power to everybody for 1938, 1939, and from now on.

(SEE PAGE 12)

THE world may have gotten itself into a sorry state of affairs in 1938, but one development which the Recording Angel will have to write on the credit side of the ledger is the increase in residential and farm power usage. This increase, registered in both the number of new customers and in the amount of consumption per customer, is reflected in the reports of the Rural Electrification Authority and the Edison Electric Institute. Doubtless the trend will continue in 1939, giving the Recording Angel another entry to make along the same lines one year hence. RALPH B. COONEY (who should be well known to FORTNIGHTLY readers by this time) discusses rural reaction to this trend in his article beginning page 12. He is a frequent contributor to business periodicals.

IMPORTANT decisions preprinted from *Public Utilities Reports* may be found in the back of this issue.

THE next number of this magazine will be out January 19th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1-64, from P.U.R.(N.S.)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

C. J. STRIKE
President, Idaho Power Company.

". . . the most misunderstood part of our business is electric rates."

OSWALD RYAN
Member, Civil Aeronautics Authority.

"Civil aviation is the backlog of aerial preparedness for the national defense."

BRUNO RAHN
President, Wisconsin Utilities Association.

"High taxes, not electric rates, are keeping and will continue to keep industries out of Wisconsin."

STANLEY JENKS
Editor, Gas Magazine.

"All gas has lacked in the past has been the glamor which our electrical friends have been able to wrap around their appliance."

JOHN C. PAGE
Commissioner, Bureau of Reclamation.

"Federal reclamation is not a system of charity, nor does the Bureau of Reclamation have a guardian's relationship with its projects."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

"I do not want these [public] power properties, if they are developed, to escape taxation, although we cannot put the payment in the form of taxation."

CHARLES W. CHASE
Former President, American Transit Association.

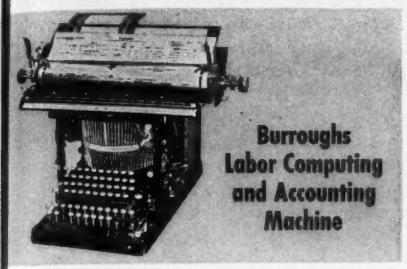
"I think our [transit's] number one job today is to promote better understanding of transit among our riders, our employees, and the general public."

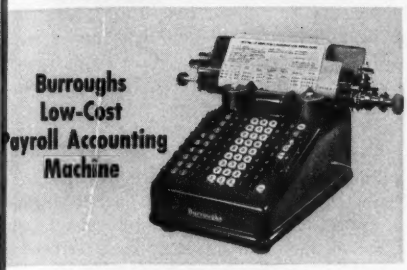
WILLIAM O. DOUGLAS
Chairman, Securities and Exchange Commission.

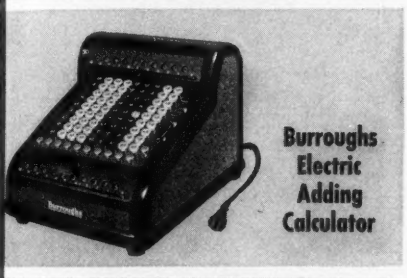
". . . with a utility industry quickening to the great possibilities for healthy and sound reconstruction under the Public Utility Holding Company Act of 1935, opportunities for individual initiative should and will be accorded first place; governmental propulsion, second place."

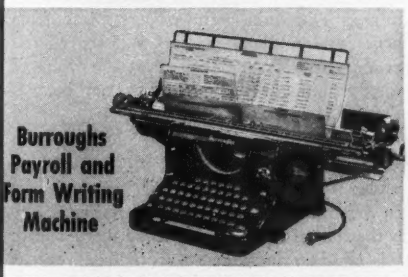
SAMUEL B. PETTENGILL
U. S. Representative from Indiana.

"The present policy of splitting up responsibility and jurisdiction for rate making between ships, aviation, railroads, trucks and busses among different governmental agencies, is absolutely intolerable. The agencies compete with each other as much as the industries they regulate."









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T. A. M. CRAVEN
Member, Federal Communications Commission.

"I feel that in any action which may be taken by the commission, utmost caution should be utilized to avoid the danger of the commission censoring what shall or what shall not be said over the radio."

EDITORIAL STATEMENT
Electrical World.

". . . it is not too much to say that more of the credit [for the progress of farm electrification in this country] should go to the Committee on the Relation of Electricity to Agriculture than to any other single agency."

C. O. RUGGLES
Professor, Harvard University.

"The public would be foolish indeed if it did not secure its public utility service in the most economical manner, provided it had been honest with itself in trying its experiments and in making all the facts generally available to both ratepayers and taxpayers."

THOMAS R. AMLIE
U. S. Representative from Wisconsin.

"Private utilities seem to share the attitude of the governments of imperialistic countries. They have tended to regard certain areas as their own, whether they developed them or not, and in the same way they have tended to recognize each other's territorial rights."

DAVID I. WALSH
U. S. Senator from Massachusetts.

"It is not the concern of the Federal government whether the state disposes of its water power wisely or unwisely . . . the day may come, and the possibility will always exist, that the Federal government, in control of all the water power of the nation, if such comes to pass, may itself deal with it unwisely."

JAMES R. GARFIELD
Former Secretary of the Interior.

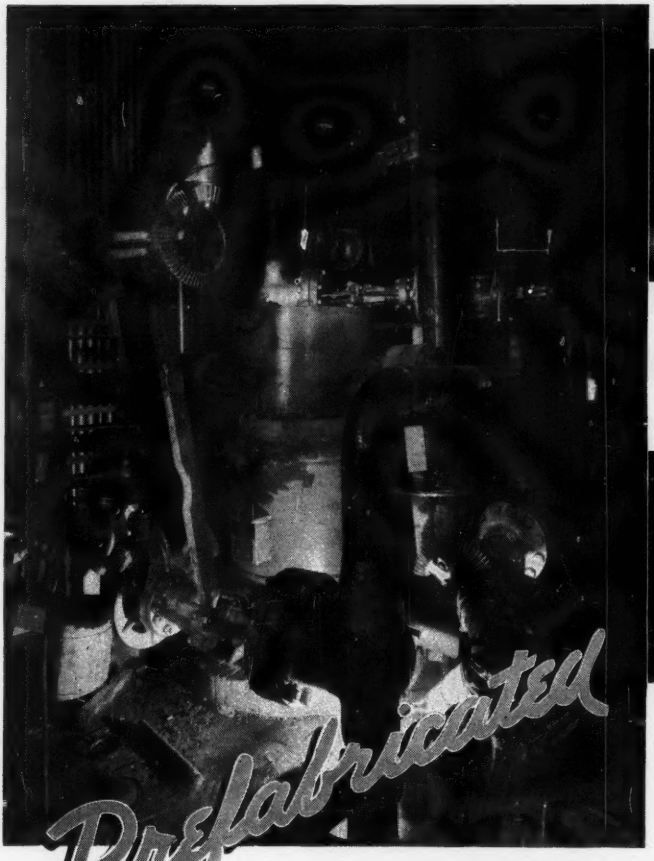
"All state and national regulatory bodies should be composed of men skilled in their subjects, free from political influence, and holding office under a proper merit system rather than subject to dismissal at the whim of each succeeding administration. No regulatory body is safe unless these rules are followed."

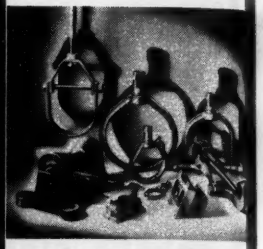
DOROTHY THOMPSON
Newspaper columnist.

"If people can be frightened out of their wits by mythical men from Mars, they can be frightened into fanaticism by the fear of Reds, or convinced that America is in the hands of sixty families, or aroused to revenge against any minority, or terrorized into subservience to leadership because of any imaginable menace."

EDITORIAL STATEMENT
Electric Light and Power.

"If the power committee [special committee on power resources] is sincere in recommending a practical plan for a war-time basis of the industry, its first action will be to shift the emphasis of the Federal government's attitude toward the utilities from 'cheap power' to a sound development that will coördinate the entire power supply of the country."





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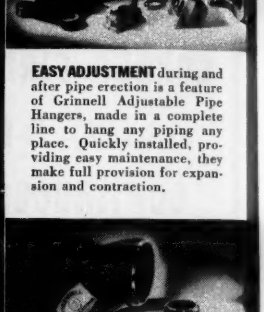

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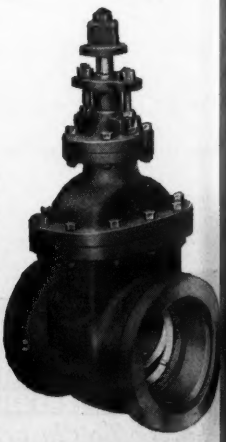

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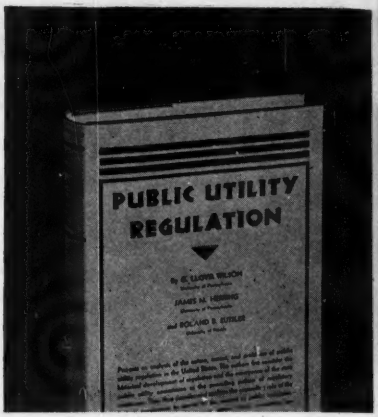

Just Published

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By G. Lloyd Wilson, Professor of Transportation and Public Utilities, University of Pennsylvania
James M. Herring, Assistant Professor of Geography and Public Utilities, University of Pennsylvania
and Roland B. Eutsler, Professor of Economics and Insurance, University of Florida

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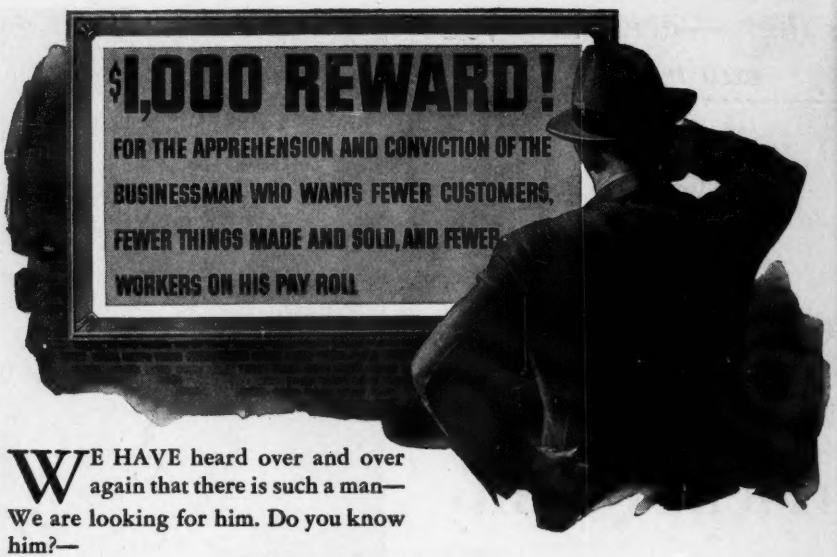

WE HAVE heard over and over again that there is such a man—We are looking for him. Do you know him?—

A fellow who'd rather fire a man than hire one—

Who'd rather see his business slump than gain.

How absurd!

Ask yourself why he is in business.

Do you know a single businessman whose ambition is not to grow, to get on and up in the world?

He can't grow without sharing his growth with others, without hiring more helpers, without making or distributing more goods to people who want them, *all of which means more jobs.*

Even if he is as selfish as he is sometimes pictured, his ideas as to how he can increase his business activity are important to all of us. *His counsel should be valuable.*

What does he say?

We recently asked 200,000 of the two million owner-managers of business what, in their judgment, prevented them from adding more men to the pay roll. Almost without exception all said, in effect: "Our customers are paying, in hidden and direct taxes, what they ought to be spending for goods."*

Nearly one-third of the income of all of us now goes to the cost of Government. Only one dollar out of six is spent for relief, contrary to the general impression. Too little is left today for the expansion of old industries and the development of new, from which springs employment.

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In 1890 only five cents of the income dollar was taken for all government expenses, Federal, State and local.

By 1929 the five cents for our government expenses in the United States had grown to 16 cents.

Today political agencies are spending 30 cents of each income dollar. Business—labor and management—should be alarmed lest America become politics-ridden, like the Old World, and the greater toll of taxation prevent opportunity for new industries with the consequent increase of employment.

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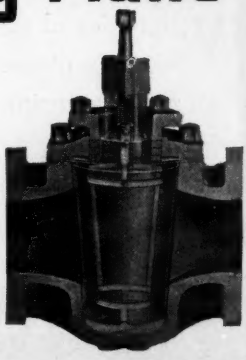

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Utilities Almanack

JANUARY

5	Th	¶ *Mid-West Shippers Advisory Board convenes for winter meeting, Chicago, Ill., 1939.*
6	F	¶ *Minnesota Telephone Association will convene, St. Paul, Minn., January 24–26, 1939.*
7	Sa	¶ *American Society of Heating and Ventilating Engineers will hold annual meeting, Pittsburgh, Pa., January 23–26, 1939.*
8	S	¶ *Edison Electric Institute, Electrical Equipment Committee, will hold convention, Buffalo, N. Y., February 6, 7, 1939.*
9	M	¶ *Edison Electric Institute, Transmission and Distribution Committee, will convene for session, Buffalo, N. Y., February 9, 10, 1939.*
10	Tu	¶ *National Electrical Manufacturers Association will hold mid-winter conference, New York, N. Y., February 5–11, 1939.*
11	W	¶ *Atlantic States Shippers Advisory Board opens convention, Baltimore, Md., 1939.*
12	Th	¶ *American Engineering Council starts annual meeting, Washington, D. C., 1939.*
13	F	¶ *Engineering Institute of Canada will hold meeting, Ottawa, Ont., February 20–22, 1939.*
14	Sa	¶ *Texas Telephone Association will hold convention, Dallas, Texas, March 22–24, 1939.*
15	S	¶ *Oklahoma Telephone Association will hold session, Oklahoma City, Okla., March 27, 28, 1939.*
16	M	¶ *Kansas Telephone Association will hold session, Junction City, Kan., March 30, 31, 1939.*
17	Tu	¶ *Nebraska Telephone Association will hold session, Lincoln, Neb., April 11, 12, 1939.*
18	W	¶ *American Society of Civil Engineers begins annual meeting, New York, N. Y., 1939.*

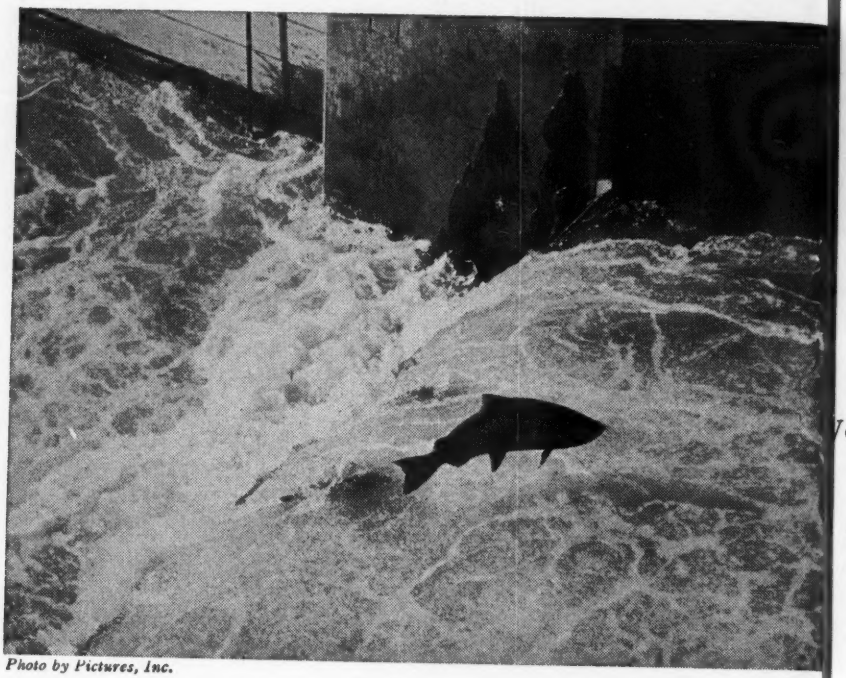

Photo by Pictures, Inc.

Salmon Scaling Bonneville
Ladder

Public Utilities

FORTNIGHTLY

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The Fever May Be Lessening

The period of political attack on the utility industry is, in the opinion of the author, nearing its end. War and electric power—Nebraska's Little TVA.

BY HERBERT COREY

Two things of significance to the utility industry have been noted recently. Taken together they may mean that the period of political attack on it is nearing an end. An era of adjustment may be at hand.

A third, and even a fourth, factor may be added. We will come to them in time. The first two are real. The second pair are in a doubtful area.

The first fact is that the administration is willing to coöperate with the utilities in the eastern manufacturing district. There may still be an element of compulsion in this offer of coöperation. But the important thing is that the men who are believed to be on the inside—they believe themselves to be—are confident that the administration has adopted a new attitude.

The second is that the troubles experienced by the Norris hydro-power projects in Nebraska are threatening political flarebacks. Roseate theory has bumped against practicality. Not only are Nebraska taxpayers and ratepayers dissatisfied but the reasons for their dissatisfaction are becoming known in some other districts in which hydro-power is being promoted by the Federal government. The yardstick has gone into reverse. The inquiry now is not into the real or presumed sins of the privately owned utilities but into the need for and cost of the Federal plants.

So much for the two important developments of the day.

The third and fourth factors have to do with men rather than with power production. Some of the men who have been most influential with the administration are reported as losing their "in." They have been the most influential and enthusiastic leaders in the campaign against the utilities. The new Congress, too, will almost certainly be less pliable than have been national legislatures of the immediate past. No suggestion is being made that spending will be greatly curtailed, but it is at least possible that the control of the purse will be recovered by Congress. It is extremely probable that several of the hydro-power projects furthered by the Federal government will be closely scrutinized.

IN the last few months the reading public has been somewhat ennuied by the utility situation. That burst of glory which enveloped the TVA has been considerably dimmed. A political campaign has been going on; European troubles have held the first pages; business is beginning to show signs of revival, and farmers have been turning heretic on the AAA. All these things have made good reading. Yet if the presumption is justified that some of the fever is out of the utility chart, it is of immense importance. It means the release of an immense sum for expansion and betterments, and this should convey some assurance to the holders of utility stocks and bonds. It is admittedly difficult for a prophet to find a clear vision in the crystal ball when persons of high position keep shifting the globe around. Yet the prophecy is worth reading. There are good reasons to believe that the utilities again are to be regarded as business enterprises of the highest consequence instead of public enemies.

Hitler figures in the first case. This assumption may be considered a little far-fetched, but it is a fact. Every one remembers the story of Europe's month of agony. What may not be fully realized is that as a consequence of Hitler's triumph he might, possibly, make demands on countries in South America which might compel the United States to erect a Monroe Doctrine barrier. This is stated only as a possibility, but as a possibility that cannot be ignored. If definite friction were to arise between Hitler and the United States, we would be helpless in many respects.

GERMANY is superbly armed today, but the rearming program kept her busy for five years. Great Britain and France were a year late in starting. They worked at their programs for only four years, which was not enough. They were unable to challenge Germany's might at Munich. If we were called on to back our words with action we could not do much today. Not only are our Army and Navy deficient in many of the vital necessities of war, but we could not manufacture these things at anything like the speed demanded by the pacific nation trying to become a warlike nation over night.

We would lack power. Electric power.

Our manufacturing industries are concentrated in the eastern area of the United States. The electric power available is sufficient for the normal demands of full-time business. It is more than sufficient for the demands

of the present day, of course. But it would not be sufficient for war-time needs. It never has been. We thought we did fairly well during the World War—except those of us who were in touch with the inner affairs—but it is a fact that if the Armistice had not come just when it did we would have been faced by a very serious power shortage. We were just beginning to get into production for war at that time. In some lines—artillery, rifles, hand grenades, planes — we were never on a war footing. We were then able to call on our allies to supply our deficiencies.

IT is not regarded in high quarters as feasible to rely on any ally if war were to be forced on us at this time. European politics is an uncertain mixture. No one can possibly say today what will be tomorrow's combinations. These things are said not to suggest that there is any danger of war, but to make the fact clear that if we went to war—whether we went to war unwillingly or with a whoop—we would today be armed mostly with cornstalks. When that fact became clear to the Roosevelt administration an inquiry was set on foot, the aim of which was to discover our deficiencies of power and how to repair them. Given plenty of power — PLENTY — we could perform miracles. If the dynamos were overloaded we could not.

A comprehensive and strictly factual report has been made, for which every source of information was tapped.

The net showing is that if war were to come we would be terribly handicapped by a power shortage.

More than that, if business were to regain a normal momentum the power supply would be unequal to the needs in 1940.

The administration, therefore, offered to the utility industry in the eastern manufacturing section an assurance that it will coöperate with it in the needed expansion.

That assurance has been accepted by men who can speak for the utilities. At the time of writing this understanding had not gone beyond a realization of the problem and a joint determination to solve it in a spirit of friendship. It is, unfortunately, true that friendly understandings have been had before and have not come to anything. But the fact that the national safety might be imperiled, if and when war comes, unless both sides to that agreement can work together in unity, offers some assurance that it will last.

FOR this much is certain. War production must come from the eastern area.

The great government-owned and -built hydroelectric plants in the West would be almost valueless.

❦

¶ "IF *or when we go to war it will be up to the eastern manufacturing area to produce the goods. Guns, rifles, bayonets, uniforms, blankets, hand grenades, trucks, shoes, hobnails, steel hats . . . The number runs into the thousands. Bonneville and Grand Coulee and Boulder and the TVA and the rest of the government's hydroelectric projects are magnificently large and picturesque. But so is the Sphinx.*"

Not quite valueless, of course. Some part of their power could be made use of. On the other hand, it is conceivable that for practical purposes they would be nothing less than nuisances. They would actually slow up our production, jam our transportation, and cause the most infernal tangle ever created even by a war. No one who saw at first hand the operation of national hysteria, plus practical politics, plus a wild enthusiasm to produce without knowing what should be produced, during the 1917-1918 period, can doubt that if we were forced into a war there would be an immense clamor for the use of the power being produced or potentially producible in these great government plants.

Newspapers and magazines have accepted them as a kind of insurance against the power-pinch which would result from war. But their power could not be used for months after a declaration of war. The distances from sources of raw material and the shortage in transportation facilities would make manufacturing on the spot impossible. Any such effort would tie the railroads in knots, even if there were manufactories equipped and ready to go anywhere near the great dams. Trucks could not be relied on, according to the War Department's experts. In time the power might be carried to the industrial centers, but the building of lines and stations would be an added handicap to the nation's effort, and a handicap imposed during the first few months when speed of production would be vital to the national safety.

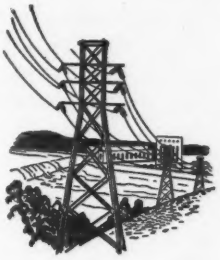
These plants have cost hundreds of millions of dollars. If we were to go to war tomorrow they would not be worth a nickel. This is not an argument that they will never be worth their cost. That is another and a different story. But for the purposes of war production they are practically valueless today and for the reasonably immediate future. Nor is this an argument that at some future time, either by the extension of their power nets or through a complete rearrangement of our transportation scheme, they might not be of immense value in war time. That, again, is another story. It is simply a statement that they could not be utilized for war-production purposes at any time within the next few years, and world conditions are such that the next few years must be considered as a period of possible danger.

It might be said with some assurance that this is the position of the administration. It is not probable that such an admission would be made by any acknowledged spokesman. But in the inner circles the facts as briefly set out are admitted. If or when we go to war it will be up to the eastern manufacturing area to produce the goods. Guns, rifles, bayonets, uniforms, blankets, hand grenades, trucks, shoes, hobnails, steel hats. I have forgotten just how many different articles are used in war. The number runs into the thousands. Bonneville and Grand Coulee and Boulder and the TVA and the rest of the government's hydroelectric projects are magnificently large and picturesque. But so is the Sphinx.

The report referred to also shows that if this country were to resume what we used to think of as normal industrial activity, the eastern area would run short of power. In other years the managers of the utility companies were able to look ahead and make provi-

Shortage of Electric Power

"THE electric power available is sufficient for the normal demands of full-time business. It is more than sufficient for the demands of the present day, of course. But it would not be sufficient for war-time needs. It never has been. We thought we did fairly well during the World War . . . but it is a fact that if the Armistice had not come just when it did we would have been faced by a very serious power shortage."



ion against anticipated industrial activity. This has not been possible during the past few years, while the utilities have been the objects of political attack. Even if expansion were desirable, money was not easily come by. No utility company, broadly speaking, dared take the risk of expansion in view of unsettled business conditions. Whatever may have been the cause of the depression, and this is not a discussion of political matters, the depression has been there to be reckoned with. It was recognized by the administration's specialists that if an old-fashioned industrial boom were to begin it might run head-on into a power shortage. The consequences, political and otherwise, were too painful even to think about.

Hence the decision by the administration to encourage the utility men of the East to enlarge their facilities. Conferences have been held in which both sides have manifested willingness to coöperate.

THE utility men have been given assurances of fair play if they do coöperate. If they need money with which to expand their plants, the government will find it. They have replied that they can get all the money they need if the administration gives assurances of its friendly attitude.

The administration has let it be known that if the utility men do not coöperate, the government will take hold of affairs and make the enlargements at its own cost. It does not wish to do this, for the discovery has been made that the investment of privately owned money produces taxes, but that the investment of government money carries with it the payment of interest. There seems no probability that much, if any, government money—taxpayer money—will be invested. If the administration promises fair play none will be needed. Utility stocks used to be sound investments, for the most part.

This new position of the administration vis-à-vis the utilities must pain U. S. Senator George W. Norris very deeply, for it is based on the principle of interconnection, which he has fought so vigorously for fifteen years. The administration realizes that if there were to be a war, and enemy plane carriers could get close enough to our coasts to send out a fleet of

bombers, and if those bombers destroyed one power center, it would be most desirable to be able to link the factories remaining to a new source of power. Substitute peace for war and a flood or a fire for an enemy bombing fleet, and you have a statement of the reasons why utilities have been tying their plants together almost ever since they began to use copper wire.

NORRIS fought this bitterly. He used to show a map to the Senate on which power companies were portrayed as connected and therefore villainous. It is true that most of Norris' fire was directed at the holding companies, but one reason for the existence of the holding companies was to provide an effective linkage. His map of an octopus in red sprawled over the country no doubt aroused the anger of many ill-informed men against the power companies. And now the administration has thrown his map into the discard and proposes to connect the power sources of the East in so tight a net that no matter how harshly we might be bombed — if and when there is a war—manufacturing could never be more than temporarily and sporadically impeded. The onlooker sees this as a sound precaution against a danger which may never become a reality and an excellent preparation for the better business that is to be looked for in the years to come. But it is tough on Senator Norris. His man-eating octopus appears to have been a papier-maché affair with piano keys for teeth.

It seems to me that this change in the administration's attitude is of vital importance. It may not be a permanent change. The history of the past few years warns against going too far o on the limb of prophecy. The mo that can safely be said is that it is departure from the policy of interfe ence pointing toward future bureau cratic control which has been the re cent vogue. It would seem, too, to hoo elbows with the SEC's plan for the con trol of holding companies. That is, i statements by SEC officials are to b taken at face value, to admit to fu fellowship the holding companie which perform a service in tying to gether operating companies which ar in a position to coöperate.

But it is hard on Senator Norris. Hi octopus is no longer a terror. It ha been given the kiss of peace.

AN even harder blow to Norris' politi cal position, not to speak of an sentiment of admiration he may cherish for himself, is the fact that his Littl TVA in Nebraska seems to be washing out. This hurts because the effect i primarily political and Mr. Norris i a prime politician. The fact that hi $50,000,000 power projects in Ne braska may prove to be so injurious t the interests of the state that some o them may be ultimately dismantled hit him, so to speak, between wind and water. It follows that other state which have had hydro-power plants thrust on them may come to doub Mr. Norris' omniscience. It will be re called that most of the money offered by the government has been received and spent and that there is small hope of further largess. This will help to clear the eyes of many a taxpayer in the western states. They may in turn help to clear the eyes of their Repre sentatives in Congress.

It will be recalled that there is an

ndefinite Seven TVA's plan before ongress. It is true that the paternity as something of a neighborhood affair, but Mr. Norris was at least the randpa. If he has been wrong in the atter of power nets and their usefulness and in his own state's power plans, omething of his sanctity will have departed from him. An indication to this ffect was recently given by the White ouse "spokesman," who seemed to ook with disfavor on newspaper tories of the Seven TVA's plan. It ay at least be said that the path of he plan has not been smoothed by this naladjustment of the Norris halo. But is troubles in his own state may be xamined more in detail.

No one seems to have wanted the Little TVA in Nebraska except Norris and his political aides. At least o evidence has been produced that any ne in Nebraska, barring some politicians and business men who might ope to prosper by a Little TVA, ever sked for it. This is not the place for thorough review of Senator Norris' ower plan, but the facts may be ketched briefly. The conclusion may e stated first, as a foundation on which o set these facts.

The Norris plan, taken as a whole, as been a complete failure. It has njured some of the best farming land in the state. It has reduced the tax hopes for the future. The power it may produce has not been needed.

The U. S. Army Engineers had reported against the plan. Their adverse decision was supported by engineers of the PWA. But the plan was to be Senator Norris' monument. It was to leave behind him a physical creation which would dwarf any other thing of the sort ever done. It is true that Norris was the father of the TVA projects in the Tennessee valley, but his Little TVA in Nebraska would gladden the eyes of his own home folks through life everlasting. His political position vis-à-vis the Roosevelt administration was such that nothing could be refused him. At the time, too, the Federal government was spending money in relief projects by the long ton. It seems to be a fact that both the President and Secretary Ickes, head of the PWA, turned thumbs down at first, but Norris talked them into it.

He believed in it with all his heart.

Belief in his own projects comes easy to Mr. Norris because he refuses to examine any statement by the opposition except with a hostile and jaundiced eye. A man who opposes him is of necessity a paynim recreant and would kick a sleeping dog. What

¶ "Floods *in the Southwest have put emphasis on the fact that dams filled for power production are of no use for flood control. When this is read in conjunction with the administration's present intention of coöperating on a friendly basis with the utilities in the eastern manufacturing area, it would appear that the more violent phase of the political attack on the utilities is at least nearing an end. A period of compromise may be at hand.*"

he has always wanted is to harness the Nebraska rivers to power. They are unpleasant rivers to deal with, having a fashion of alternating between a teaspoon content and rampaging floods. In order to get the consent of his Nebraskans he labeled his power plan for flood control. No doubt Senator Norris was entirely sincere in this. For years he had been a warm friend of Dr. A. E. Morgan, the deposed head of the TVA. That friendship was broken about the time that Morgan emphasized during his quarrel with his fellow directors that an empty dam is valuable to control floods, but a filled dam has no value at all. Only a dam carrying a fairly good head can be of use in the production of power. The Morgan pronouncement came just at the time when it seemed the Norris dams in Nebraska might produce power that was not needed, but could not control floods. When two characters as positive as those of Norris and Morgan have a head-on collision the only thing certain is that neither will recede.

THE salient features of the Nebraska failure seem to be:

A. Nebraska's long record as a state that pays as it goes and keeps out of debt. It advertises these facts in the magazines;

B. Nebraska has more river mileage than any other state. But the rivers are not manageable. Not only do they alternate between low water and high water, but they carry a heavy silt content. Some of them lack an impermeable bottom lining of clay. When water is backed up behind a dam it simply leaks out through the light loam of the farm land and injures or destroys farms;

C. The Nebraska State Planning Board reports that of 219 hydro power plants which have been developed in the past, 173 have been abandoned, and only 46 remained in operation at the end of 1936;

D. At the insistence of Senator Norris, about $50,000,000 of Federal money has been put into hydro-power projects. There is no shortage of power in Nebraska. Several communities owning power plants have refused to contract for the Federal power on the ground that they can produce the power they consume both more cheaply and more dependably in their own steam-driven plants. The uncertain habits of Nebraska's rivers are made more uncertain by their habit of occasionally freezing solid during an especially hard winter, and firm power cannot be guaranteed.

THE present situation seems to be that the Federal government has laid a large and unsound egg in Nebraska. If the Federal projects are to be maintained, they can only assure firm power to their prospective customers by the purchase of many of the privately owned utilities in Nebraska. Hence the recent action of the PWA and the FPC in trying to effect a tentative sale of Iowa-Nebraska Light & Power Company properties to two Nebraska public power districts.

On the other hand the privately owned utilities are confronted by the threat of underpriced Federal power, when and as available. The utilities might conceivably be forced to buy this power, which they do not need, as a measure of protection. In that event they would be compelled to increase their rates to consumers. There has

been talk of supplementing the Federal hydro projects by steam plants, in order to be sure of firm power for competitive sale. The present rates in Omaha and Lincoln, in which cities more than one-half the electric energy of the state is consumed, are among the lowest for cities of similar size in the United States.

The Nebraska affair has had the effect of directing the attention of the voters in other states to the practical aspects of the Federal plans for the use of water power. It is being gradually realized that if power is not needed in a district, it is a waste of money to produce it. Floods in the Southwest have put emphasis on the fact that dams filled for power production are of no use for flood control. When this is read in conjunction with the administration's present intention of coöperating on a friendly basis with the utilities in the eastern manufacturing area, it would appear that the more violent phase of the political attack on the utilities is at least nearing an end. A period of compromise may be at hand.

Science Circus in the Nation's Capital

COOKING *without heat . . . pouring cold light out of bottles . . . controlling radio volume by a wave of the hand . . . pulling music out of a neon sign . . . These were just a few of the miracles being unfolded before awe-struck Washingtonians at a free open-air circus in the park at 14th street and Pennsylvania avenue, N. W., on October 27th.*

Charles F. Kettering, General Motors science wizard who conceived the .elf-starter and who more than any one man is responsible for the refinements of modern autos, is the daddy of this show.

He wanted people to realize the scientific advancement by showing them what laboratories are doing. So he sent on tour a streamlined circus which unfolds from trailer trucks.

This is what you see:

An attendant places a heavy aluminum ring on an electric "induction furnace." The ring leaps several feet.

He puts his fingers and an iron spike into the furnace. Instead of leaping the spike becomes red hot, but his fingers do not even become warm.

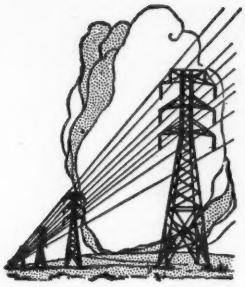
He drops an egg into a frying pan, puts the pan on a newspaper, the paper on the furnace. The egg fries. The paper is not even scorched.

He connects a neon sign with a phonograph and the former plays music which is picked up by a photoelectric eye which passes it on to the audience. Music too loud? The demonstrator holds up his hand and the volume dies.

He mixes the contents of two bottles. There is a sharp flash of light without heat which lasts several seconds, then becomes a bluish glow which continues several minutes.

The circus, called the "Parade of Progress," is a road edition of the same show which General Motors had at the Century of Progress in Chicago. A crew of fifty-five has rolled it over 200,000 miles of highways, circling the United States and down into Mexico.

—EXCERPT *from The Washington Daily News.*



Electricity Comes at Last to Richmond Four Corners

How the people regard this miracle— a suggestion to executives and others.

By RALPH B. COONEY

URBAN life was becoming a bore. The city was damply chill and thoroughly depressing. So, when our friends suggested a few days in rural New Hampshire, our minds were more than receptive to the idea.

"We'll write Mrs. Cook and see if she can take us," said our friends. That sounded pleasant. We had never been in this particular community, and we'd never eaten any of Mrs. Cook's tasty country meals. But we had heard a lot about them; summer after summer these same acquaintances had been returning to the city after a few weeks with Mrs. Cook looking particularly fit and well-fed!

A few days later the phone rang.

"All set! We're going. Mrs. Cook says she can hardly wait to see us. Wants to show off the electricity!"

"What?"

"Didn't we tell you, the electricity has just come through town. Her letter is full of it."

And that's how we found ourselves, a few nights later, driving up the dark road that leads from Winchester to Richmond Four Corners. To look out at either side or backwards was to see only blackness. While straight ahead, the car's lights revealed nothing but an ever-climbing road, barricaded on either side by dense pine woods. As the miles of pines rolled by without a break, we who were strangers to the country began to believe that our friends, despite their assured air, must be mistaken in the route. It hardly seemed possible that human habitations—comfortable habitations, at any rate — could exist within this all-encompassing forest.

But unexpectedly the wall of pines broke, and with a dip in the road we were suddenly among a group of houses, sharply identified in the night by the lights that shone from nearly every window, from door-side fixtures and from porch lamps.

"Look," shouted Lou. "Electricity!"

"Do you suppose it's for us?" I asked.

"Of course not—they're just blowing themselves to a bit of light!"

We turned in to an unfenced yard before one of the houses—one lit up a little more, even, than its neighbors, and as the motor coughed and grew still, the door opened and our hostess came rushing out to greet us.

"Hello! Hello! It's so good to see you!" These were her first words. But the second sentence, tumbling right after, was "Do you see—the electricity's in! Just two weeks ago!"

It was pretty late, but Mrs. Cook had not failed us. Her supper was all that our friends had promised. We wolfed down our meat and crisply fried potatoes and home-canned corn and johnny - bread, grew comfortably stuffed on heavily iced cake, and sat back over the coffee to exchange city and country gossip.

But question as they might, our friends could only momentarily take Mrs. Cook's mind off the one big news item of the winter—the coming of the electric lines. With genuine excitement, we were shown the marvelous switches that turned first one light on, then three, then turned off all. We were asked to admire half a dozen new table lamps, several new floor lamps, a bridge lamp. We were urged to turn on the new electric radio and compare the tone with that we were able to obtain in the city. We were shown the kitchen outlets where the electric iron and toaster would be plugged in. We were asked about vacuum cleaners and electric iceboxes and washing machines.

"I just can't realize that we've really got electricity at last," Mrs. Cook said as we finally settled down to a somewhat calmer contemplation of the great change. "And I don't know how we managed to live all these years without it. Oh—did I show you the way I can light the back entry from the kitchen?"

And she was off again, eager to demonstrate once more the wonders that the fabulous wires had brought into her home.

"What company are you dealing with?" I finally inquired.

"The power company at Keene."

"Do you know the name?"

"Why, darlin', I just can't recall—it's the power company at Keene, that's all, I guess."

Suddenly there was a pause.

"Why," said Mrs. Cook, "here I've been talking away, and forgetting to tell you about the dance tomorrow night."

"The dance?" asked one of our companions. "Why, Richmond hasn't had a dance in years."

"I know—but this is special. We're giving it as a testimonial to Harold Dickinson, and if there's any money left over, we're giving it to him as a present. He's the one that's been working all these years to bring the electricity to the town. Seven years, I think it is, he's been working to get electricity here—and all the neighbors felt it was such a big thing for the town, that we just had to do something to let Mr. Dickinson know how we felt about it. There will be a supper first, and the dance after. I'm baking a pot of beans for the supper."

"Shall we go?" asked our friends.

"You bet!"

THE next morning we had an opportunity to see what Richmond really looked like. It was a town only in the strictest New England interpretation of the word.

From Mrs. Cook's front door we looked out on four houses and a store; from her east window we looked across upland farms towards the Fitzwilliam road, marked by a scattered group of semi-isolated houses; to the north our eyes followed the open road to Keene; to the west were the thick pines through which we had come the night before.

The town, we discovered, consisted mainly of a narrow upland plateau, with the Keene road running down the middle. A mile or so to the north was another little cluster of houses, centering around the town building and the Grange hall. But mostly it was New Hampshire countryside, with small farms and pasture lots, and many square miles of pine woods. Its citizens followed rural and semirural pursuits; it wasn't even conspicuously engaged in the summer-tourist business.

Richmond, we decided, offered a pretty true picture of that old-fashioned American countryside which is so rapidly disappearing under urban influence.

That night we went to the dance—a real New England country dance in a real New England country Grange hall. There was nothing pretentious about it, nothing self-conscious, nothing "touristy." It was a home-town affair, put on by the home-town folks to honor a home-town man, and outside of the four of us from the far-off city, everyone in attendance came from near-by farms and villages.

To them the old square dances were still vital expressions of social activity. They did "Hull's Victory" and "Lady Walpole's Reel" and "The Portland Fancy" with precision and enthusiasm. The old folks sat along the sidelines and serenely gossiped; the children skipped and slid and chased each other over the dance floor; the men gathered for a smoke and a bit of talk about the anteroom stove.

HERE, too, was a picture of old-fashioned America, a picture easy to sentimentalize over, to describe as quaint and charming. But when, around eleven o'clock, the drum rolled and silence fell, and the townsfolk's spokesman began to tell what the party was all about, to describe what the coming of electricity had meant to the community, to voice the town's gratitude to the man who had made this thing possible, one realized that while

¶ "THE *head of a widespread utility company must think of many things—he must be wise in matters of finance, of engineering, of law. But despite his concern with these intricate matters, the great utility leader will never lose touch with the essential magic of the force which he directs. Perhaps this is one of the things that is wrong with the utility picture today. . . . Perhaps too many of our major policy-making utility executives have lost touch with the essential magic of electricity.*"

this might be pleasant to remember as a picture of old New England, it was actually something much more significant.

This party represented old-fashioned America's salute to modern America—it stood for a fusing of the old ways of living with the new. Our expanding utility civilization had just conquered another little segment of the countryside.

Eventually, opportunity arose to meet this man who had thus won the gratitude of his neighbors. From him we learned something of the 7-year struggle which had eventually brought the poles marching down the highway from Keene.

It was a story of unfailing faith and patient effort—with circumstances the only villain. Twice before the necessary subscribers had been enrolled, the plans made, the work ready to start. Twice before circumstances beyond the control of either the local utility men or the community had toppled the dream into the discard. Richmond had come close to believing that such a rural neighborhood could never know the comforts and conveniences of electricity, and that it was foolish to even hope for them. But for the third time, this one man had rallied the discouraged, silenced the skeptics, and secured the necessary signatures. And at last, the electric lights were burning brightly and steadily in the town.

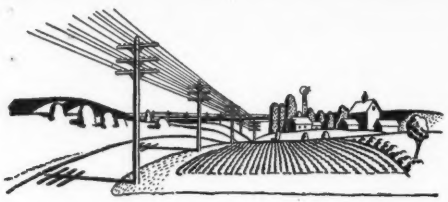
We remained in Richmond for four days. During the whole time, the one thing that everybody talked about was the advent of the electricity. The few families who still lived beyond the power lines talked about the day, now hopefully near, when they, too, would have the current in their homes and sheds and barns. Those already receiving service rivaled each other in telling us how wonderful it was to have the lights in, and all about the appliances they planned to buy as soon as possible. They showed us switches and fixtures with the pride of youngsters showing off new toys.

One thing, however, struck us as odd. These were thrifty folk, of a stock which had, for generations, wrested a living from this none-too-generous soil. Yet every night the lights went on in a burst of glory all through their trim white houses. Surely there was something more to this extravagance than a mere wish to impress each other and the stray midwinter traveler.

The reason, it turned out, rested on a display of thrift in reverse English. Under the terms of their contracts with the utility company, each member of the community had agreed to pay a minimum of $3.75 a month for the period required to amortize the construction costs. Current consumption was credited against this sum, and the one fly in the ointment of these conservative country folk was the fear that they might not get their money's worth.

"Of course, I'm not sure," I ventured diplomatically, "but it looks to me as though some of you folks might be overdoing it. Even at a modest rate, constant burning of every light in the house is eventually going to send your bill over the guaranteed payment."

"Well, maybe we are overdoing it," replied Mrs. Cook, and for the fraction of a second there was a worried look in her eye. Then she smiled and went on. "But we don't know it, yet. We'll



Rural Demand for Electricity

"COUNTRY PEOPLE WANT ELECTRICITY. *Not passively, as they might want the luxuries of life, but eagerly and earnestly. If anything, they are oversold on the idea—they, perhaps, expect more from it than it can do (within, of course, the budget they can allow for it). Electric service stands as the great equalizing force which promises to make country living just as comfortable as city living.*"

see how it works out for the first month, and if we're being extravagant, we'll cut down quickly enough. And we're having all the light we want for a month, anyway!"

THERE was a lift in her voice as she made this final statement, and a picture of long years of dimly lit rooms, of lamps carried gingerly from place to place, of dark passages and black corners came to my mind. Magic had touched this little country community and had changed all that—and the inhabitants were relishing the miracle to the utmost. Later on, all this would become ordinary and commonplace. The power company would become just a firm with which one did business. Bills would become subjects for argument. Service would be something one kicked about when it failed to function perfectly. Fuses would become things that blew out at the wrong time.

But now—all was wonder—too good to be quite real—and even thrifty Richmond was willing to take a chance on being extravagant—at least until the first month's bills came through.

As we roamed the roads and lanes and sat by cozy kitchen stoves talking to the neighbors, as we watched the zestful romp of "The Portland Fancy," as we listened to Harold Dickinson tell about his ups and downs in getting the power lines through, I found myself trying to crystallize out of these experiences the particular things that I, as a modest student of the utilities and their ways, had learned about that phase of the business which is so neatly filed away under the heading of *Rural Electrification.*

Here they are:

1. COUNTRY *people want electricity.* Not passively, as they might want the luxuries of life, but eagerly and earnestly. If anything, they are oversold on the idea—they, perhaps, expect more from it than it can do (within, of course, the budget they can allow

for it). Electric service stands as the great equalizing force which promises to make country living just as comfortable as city living.

2. LEADERSHIP *from within is essential in organizing a rural community for electric service.* Country people are still a bit timid in dealing with the town. They are still a bit fearful of being "sold" something. And the necessity of signing long-term contracts with a "town" organization such as a utility company is a source of genuine worry. A rebuff or anything that looks tricky or a failure to reach satisfactory agreements leads to widespread discouragement.

To sell a rural community on a utility set-up, find that man in the locality who is both enthusiastic and respected, and do all your promotion work through him. Give him every help, but don't try to dupe him. And don't send your own people in while he is working in an effort to speed things up.

3. COUNTRY *people think of the utility company in terms of its nearest office.* I asked a number of people in Richmond the same question I asked Mrs. Cook—What company were they doing business with? In all but one or two cases I received the same answer that she gave me—"the power company at Keene."

The lesson in this is obvious, and one which this writer has pointed out before. Rural communities judge the utilities in terms of local management. No company seeking rural business can afford to disregard this fact. Local executives must be men of standing in their region, chosen for their understanding of its problems, and clothed with sufficient authority to meet them.

4. THE *private company need not surrender its rural electrification program to publicly financed coöperatives.* Farmers and rural residents have no particular desire to get tangled up in such projects as those encouraged by the Federal Rural Electrification Administration.

During one of the very blue periods, when electricity seemed far away, the people of Richmond were approached by emissaries of the REA. Excitement quickly flared up, and great enthusiasm was awakened. But when it was discovered that it was necessary to form a corporation, elect a full set of officers, establish a complete plan of action, and incur a debt to the Federal government, the complications and obligations involved were simply too great for a small country community to shoulder.

THESE people were not financiers, and neither are the majority of the other rural residents of the nation. They have enough troubles of their own. Establishment of fair bases for doing business by the private utilities and intelligent coöperation with community leaders by the private utility executives can keep this business in the hands of the companies already serving the territories affected.

I think that these were four good things to learn, and I was intensely interested in discovering them. But my little visit to Richmond Four Corners taught me something far more important than all of them put together. And I have since wondered if it might not have taught the same thing to some

of our great utility executives if they had also been there at the same time I was.

I learned that electricity is a wonderful thing!

We who live in cities, and ride electrically powered subways, and go up and down in electrically operated elevators, and press electric buttons forty times a day without giving it a thought, forget this simple fact. But the men who direct the destinies of the great systems that make these performances possible should never let themselves forget it.

The head of a widespread utility company must think of many things—he must be wise in matters of finance, of engineering, of law. But despite his concern with these intricate matters, the great utility leader will never lose touch with the essential magic of the force which he directs.

Perhaps this is one of the things that is wrong with the utility picture today—and I'm not trying to be whimsical. Perhaps too many of our major policy-making utility executives have lost touch with the essential magic of electricity.

Perhaps a little more feeling for the miracle and a little less concern for the machinery which keeps it operating would give them that human touch which, in the eyes of the ordinary man, seems so often to be lacking.

The "L" Clatter Is Ended but the Melody Lingers On

"A rapid transit road is assumed to have outlived its usefulness and outstayed its welcome when it gets to be sixty years old. But millions of New Yorkers every day use the Brooklyn bridge, which is only five years younger than the Sixth Avenue 'L' and which will continue to be a thing of beauty and utility for generations. The people of New York go to hear music in the Metropolitan Opera House, which is only five years younger than the Sixth Avenue 'L', and in Carnegie Hall which is getting on to fifty. In the mad glad days of ten years ago when we were tearing down pretty good structures and replacing them with structures ten times as big and as expensive, because the money burned in our pockets, Carnegie Hall and the Opera House were both threatened. It now seems certain that they will go on for a good many years . . ."

—Excerpt *from editorial, The New York Times.*

Can Value Be Determined By a Slide-rule Method?

It can be so arrived at, in the opinion of the author, by weighing investment cost in the ratio of bonded capital and reproduction cost in the ratio of stock interest.

By TULLY NETTLETON

YARDSTICKS may be in ill favor or in high repute, according to what section of the public utility field one consults, but I believe there would be ready agreement that some kind of a slide rule for arriving quickly at acceptable valuations for utility rate-making purposes would be very desirable.

The decision of the United States Supreme Court in the case of the Railroad Commission of California *v.* Pacific Gas and Electric Co. gave a strong implication that the court is now disposed to allow quite a little experimentation and improvisation by commissions in methods of determining fair value so long as the result they reach in terms of rate orders is not in itself confiscatory. Besides this, changes in the personnel of courts increases the likelihood of some decision favoring more than hitherto the "prudent investment" valuation theory which President Roosevelt has tenaciously espoused. Yet the per curiam opinion in the Indianapolis Water Co. Case, the same day as the Pacific Gas decision, indicated the court is not giving up entirely the factor of reproduction cost where price levels have changed.

In fact, great as are the advantages of definiteness which have endeared the historical cost or prudent investment theory to a great number of state and national regulatory commissions, it is questionable whether reproduction cost can with fairness be entirely disregarded so long as the general price levels make the wide fluctuations they do over periods of from ten to fifty years.

A persuasive case can be made—and has been made—for either of the theories of valuation; that is to say, the prudent investment or the present value rate base.

YET I think it is demonstrable that under actual working conditions either basis alone—present value or investment cost—would turn out oppressively after a time for either the industry or the public, and there is not much telling which. On a rising price level present value, especially if measured by reproduction cost, works to the advantage of the companies and investment cost looks better to counsel for the consumers.

On a falling price level the positions will be reversed.

The respective theories have once changed hands since their inception in the late Nineteenth Century, and to the scanner of price level charts it looks as if they might reasonably do so again in another decade. If the usual long-term trend of successively lower prices for forty years after a major war should be borne out between now and 1960, it would turn out that the arguments today are in the wrong hands for the future benefit of their users—in other words, that the companies will have been seeking a precedent against themselves in their demands for present value appraisals, and that the heirs of the Roosevelt administration will find the prudent investment theory militating against the interests of the consumers whom it seeks to befriend. So long as there continue swings of the business cycle and the still longer swings in the general price level or the purchasing power of the dollar, there will be need for some sort of a compromise between historical cost and present value, some way of composing the difference between the original cost of the plant at the time of its construction and the value of such a plant today.

OF course, the great difficulty about using reproduction cost figures as a factor in determining present value is the well-known drawback of expensive appraisals and long delays in the process of determining even approximately what a given plant would cost to reproduce new. If present methods of haggling over inventories, item by item, and theorizing about conditions that did not exist at the outset continue, then reproduction cost will be impossible of satisfactory calculation for practical purposes. But there is another method apparently available which competent experts believe can more than cut in half the time and cost involved.

This method is the use of index numbers. There is a common misimpression that the Supreme Court in West *v.* Chesapeake & Potomac Telephone Co. disapproved of attempted calculation of reproduction cost by application of index figures. It did refuse to accept the employment for this purpose of general commodity or cost of living indices, which included some hundreds of items from pork chops to underwear, and their application to the particular collection of assets which constitute a utility plant. But the court left the way open—in fact almost threw out an invitation to commissions—to find or develop price indices as to the specific commodities entering into utility construction and equipment and to apply these in a quicker calculation of probable present-day reproduction cost. In the Ohio Bell Telephone Case the commission used indexes more directly applicable but made the mistake of merely taking "judicial notice" of these instead of having them introduced in evidence

where there would be fair opportunity for the company to examine, criticize, and rebut them.

THERE is good reason to believe that if price indices are developed specifically applicable to the materials that go into making up a utility plant, the Supreme Court will not only approve but will welcome their use. Such indices have been worked out in great detail by the valuation division of the Interstate Commerce Commission with reference to railroads, and its files include data on many other kinds of construction as well. The Federal Power Commission and Federal Communications Commission could usefully work out similar indices as to other costs entering more particularly into local electric and telephone construction, and these could be made available to state commissions as from a central clearing house.

This presupposes, of course, that state commissions will adopt the practice, already found desirable and economical in the long run, of keeping continuous inventories of systems under their jurisdiction. With these implements commissions should be able to determine much more quickly than heretofore the reproduction cost factor in determining present value that would meet the tests of justice.

But, assuming this can be done, there remains yet another major difficulty—that of determining what relative weight shall be given to reproduction cost and what importance to historical cost in arriving at that "fair value" which the Supreme Court has held must be made up of these and perhaps other components.

SOME criteria prescribed in Smyth *v.* Ames, and other early cases, have largely been discarded as fallacious or unnecessary, leaving the "fair value" as substantially some sort of compromise between original cost and replacement cost. But the court has not in any of the many cases on the subject stated or approved any fixed or knowable proportion in which the two valuation figures, historical cost (or actual cost) and reproduction cost, are to be compounded in reaching "fair value."

In McCardle *v.* Indianapolis Water Co., the court said the rule "does not mean that original cost or the present cost or some figure arbitrarily chosen between these two is to be taken as the measure," but that the weight given to these and other items of evidence is "to be determined in the light of the facts of the case in hand."

Some commissions for a time took the formula to be that they should simply split the difference between the

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two measures of value; but estimates made in this manner of an ordinary unweighted average were often thrown back at them by the court, which had merely said both factors must be taken into consideration. Then the practice arose in some boards of admitting testimony on reproduction cost and saying it had been "taken into account" and then fixing a valuation which for all practical purposes might as well have been historical cost with a small addition for "going concern" value.

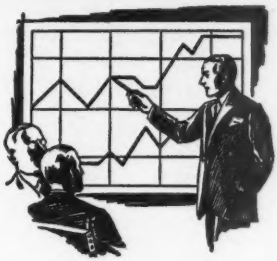
MUCH of the prolonged litigation that has often tied up and sometimes practically stifled regulation has gone back and forth through the courts on this question of what comparative importance should be given to the two factors in the eventual estimate. One informal survey recently indicated that thirteen state commissions were giving predominant weight to replacement cost, seven to historical cost or prudent investment, four considered them equally, and six decided each case independently. Such variation is hardly conducive to good regulation.

Justice Brandeis in his famed concurrence in the Southwestern Bell Telephone Case set forth that a prudent investment rate base would have the great merits of being "definite, stable, and readily ascertainable," would be determined not as a matter of opinion or fluctuating markets but as a fixed fact. He defined prudent investment as including all of the investment that had been made in the honest exercise of a reasonable judgment. This, he believed, would "give to capital embarked in public utilities the protection guaranteed by the Constitution." Conservative members of the court since have pointed, however, to the declaration in the Minnesota Rate Cases of 1913 that, "The property is held in private ownership, and it is the property, and not the original cost of it, of which the owner may not be deprived without due process of law."

SOME analysis of these two propositions and of the two kinds of capital customarily employed in financing public utilities will bring us, I think, to a further but relatively simple refinement of the Smyth *v.* Ames rule and to one I should like to submit as a fair, logical, and workable compromise.

To begin with, the lower or basal portion of the capital structure of almost any public utility company is made up of fixed-income-bearing securities or bonds which are in the nature of loans to the company and whose holders have no voice in the affairs or management of the company short of foreclosure. These creditors have no ownership equity in the property; in a sense they have not invested in the property; they have merely taken it as security or collateral for their loan. They certainly are not speculators, or at least in the normal course have not intended to be. They have wanted simply a fixed and assured return on their money, and that is all the company is obligated to give them.

Then there is in the ordinary capital structure the common and preferred stock interest, the equity of investors or speculators in the legitimate sense of the word—entrepreneurs, if you prefer. They have chosen to take the risks of the corporation. In them is vested the ownership and, let us hope, control of the property. It is they, if anyone,



Reproduction Cost As Factor

". . . the great difficulty about using reproduction cost figures as a factor in determining present value is the well-known drawback of expensive appraisals and long delays in the process of determining even approximately what a given plant would cost to reproduce new. If present methods of haggling over inventories, item by item, and theorizing about conditions that did not exist at the outset continue, then reproduction cost will be impossible of satisfactory calculation for practical purposes."

who have a right in the corporation to returns on any increment in the value of the property or a responsibility to take the brunt of any shrinkage in its value.

So, would it not be reasonable for some commission to adopt and the courts to approve a rule by which the investment cost would be considered in the ratio which bonds hold to the total capitalization of a company, and reproduction cost would be considered in the proportion of the capital stock interest in which dividends are expressly contingent on earnings?

For example, let us imagine a corporation whose plant and system cost historically, including additions and betterments but less depreciation, $40,000,000. Let us suppose then for purposes of the illustration that its cost of reproduction, to replace it as it stands, would now be $60,000,000. If we assume first that the capital structure, whatever it may be, is divided equally between stocks and bonds, then the "fair value" for rate-making purposes would be, by the suggested rule, a simple average of $50,000,000 or a splitting of the difference between the computations made on the two theories.

However, if we assume that this company is more heavily bonded—say, that 75 per cent of its capitalization is in securities bearing a fixed income charge regardless of earnings and that only 25 per cent is a stock or equity interest—then under the proposal historical or investment cost would have the predominant weight, being counted three to one over reproduction cost, and the ultimate rate base valuation would be nearer the original cost; that

is, it would be $45,000,000. In behalf of this result it may be pointed out that there is no good reason why holders of a small equity should be able to collect pyramided returns on the reproduction cost value of that part of the property built with money from investors who, by the type of their securities, cannot profit by changes in the price level or the current value.

On the other hand, in a different era the cost of replacement might fall to a point far below the original cost. Then if a company had three-fourths of its outstanding capital in bonds and only one-fourth in stocks, it would be a matter of protection to the company and to its bondholders if it were understood that historical or actual cost should predominate to that degree in determining rate base value. Historical cost then being the higher of the two, the corporation would be better enabled to earn its fixed charges.

Now to round out the example let us return to the hypothetical company of $40,000,000 historical cost and $60,000,000 replacement value, and let us assume this time that its bonded indebtedness is low—say only 25 per cent—and that three-fourths of its securities are held in the form of common and preferred stocks. It will be noted that preferred stocks for this purpose are counted in the same category with common; since in either event the liability is not in the nature of a loan, a fixed charge against the property regardless of earnings, but is a security entitled to dividends only as earned and enjoying an enhanced rate of return by way of participation in the profits or risks of property ownership. In this case the calculated rate base will be influenced three to one by reproduction cost, or will figure out at $55,000,000. Again, if the tables were turned and reproduction cost happened to be below original cost, the valuation would follow the greater flexibility and capability of this capital structure to absorb shrinkage or enhancement in the value of its property.

To be sure, there might be difficulties of definition as to whether certain preferred stocks or income bonds belonged in one classification or the other, but these surely would be surmountable with no more perplexity than regulatory officials are accustomed to encounter on many points.

It will doubtless be asked what I would do in the case of some utilities whose capitalization is entirely in the form of stocks, with no bonded debt. I would follow the rule and give reproduction cost the controlling weight in valuation. If the rule became of general use, perhaps some companies would adjust their capital structures depending upon which criterion they wished more largely to be judged by. The policy would permit the managements and security holders of corporations to determine to what extent they wished to risk the gains and losses of fluctuating cost bases and to what extent they preferred to stick to a dollar investment valuation for rate making.

The most knotty problems, I anticipate, would arise in connection with companies that have been badly overcapitalized or loaded with bonded debt so that after a period of adversity it would be questionable whether the stocks represented any genuine and substantial equity at all. Here it may

be necessary to ignore par values or scale them down so far as the purposes in hand are concerned, and to arrive at a conclusion by the exercise of judgment. But if so, this will have narrowed down the play of personal judgment from the whole field to a small segment of it and will have substituted mathematics for guesswork in the rest.

IN short, a weighting of reproduction cost and original or historical cost figures, according to some reasonable and knowable proportion, applicable to the range of cases involved, would supply what is badly needed now; namely, a rationale for arriving at that "fair value" which the courts require after reproduction cost and historical cost have been found. It seems to me that an average weighted according to the respective proportions of loan-type investment and of equity holdings would be reasonable, defensible, time saving, and beneficial.

It would mean determining the weight of the figures "in the light of the facts of the case in hand." (McCardle *v.* Indianapolis Water Co.) It would enable a commission to give definite and logical proportions to the importance of original cost and replacement cost, which it is unable to do at present though ordered vaguely to take both into account. If the suggested rule were once adopted—of weighting investment cost according to bonded capital and reproduction cost according to stock ownership—I believe it would save much loss of time in litigation and help make regulation more workable.

OF course it is to be noted that some of the more advanced theorists on the subject, such as Professor Philip Cabot and Professor C. O. Ruggles of the Harvard Business School, are recommending that the whole business of valuation be short-circuited or sidetracked. They hold, as I understand it, that management and the public should simply get together in pursuit of the rates that will make for the optimum profitable use of utility service, and that this will benefit both consumer and company regardless of investment, valuation, or rate base. The committee on valuation of the National Association of Railroad and Utilities Commissioners noted in its report last year that, "Some state commissions have met with considerable success in getting rate readjustments by conference methods."

The example of Samuel Ferguson of the Hartford (Conn.) Electric Light Company in making money by promotional rate reductions offers an encouraging lead, and the oft-recommended Washington Plan provides a mechanism of inducement to seek profits by increased efficiency under

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successively lower rates. That is, under a consent decree handed down in 1924 and modified since, the public utilities commission of the District of Columbia is authorized each year to reduce electric rates according to a specified proportion of whatever profit the Potomac Electric Power Company makes above 6½ per cent.

BUT the significant fact about the Washington Plan, so far as applying it elsewhere is concerned, is that it is made possible by the existence of an agreed rate base as a starting point. This was fixed at $32,500,000 in the original decree and has been increased each year by the amount of additions and betterments less equipment retired. On that basis the rate of yield can be calculated and the profit-sharing scale applied.

In some localities the happy coincidence may be found of a utility management sufficiently progressive and a regulatory board sufficiently reasonable that they can get together on mutually advantageous rates without abracadabra about rate base. Where that is so—fine! But a little recalcitrance on either side can send both marching off to the courts to pin down, as well as may be, the value on which a return is to be allowed.

Possibly some day we shall get away from the bothersome necessity of calculating a rate base. But if so, it looks as if we are more likely to reach that bonny stage by first working the matter of rate base down to a formula that will eliminate nine-tenths of the present latitude for argument, guesswork, supposition, and difference of opinion. When we can evolve a rate-base rule that is quick enough and positive enough to minimize litigation, we will have a rate base that can really be used.

HISTORICAL or prudent investment cost may not always be a fair measure of value. Reproduction cost may, under present processes, be much too difficult to determine. But a prescribed combination of the two which would be fair and at the same time readily ascertainable would remove an ancient stumblingblock of vagueness from the judicial requirement.

Hence I wish to urge consideration of the following "slide rule" for rate-base calculation: (a) That reproduction cost be calculated by means of index numbers applied to existing inventories, and (b) that investment or historical cost be weighed in the ratio of bonded capital, and reproduction cost be weighed in the ratio of stock interest in arriving at ultimate valuation. This, I submit, would make rate-base finding more simple and definite and would make utility regulation in general more workable.

Gadabout Gab-plant

To be used as a small temporary exchange in an emergency, such as the breakdown of the regular plant serving the rural districts, a mobile automatic telephone exchange has just been developed in England. It is equipped to serve about forty subscribers and to operate from its own power plant. It is housed in a water-proof body mounted on a trailer.

Wire and Wireless Communication

THE FCC is prepared to get its first taste of congressional inquisition on a small and informal scale when Chairman Woodrum of the Subcommittee of the Appropriations Committee of the House of Representatives finally holds the hearings on the FCC appropriation for the 1939-40 fiscal year. These hearings were originally scheduled for early in December when the subcommittee disposed of other departmental budget estimates according to the usual routine, which is to get such matters out of the way in time for submission of a completed appropriations bill early in the congressional session.

Washington observers, remembering that the FCC spokesmen before the House subcommittee have been sharply examined during the last three years, were quick to interpret the unusual action of the subcommittee chairman as betraying a determination on the part of congressional critics to give the FCC representative (who is likely to be Chairman McNinch) a good "going over." FCC officials, unofficially speaking, were not inclined to place such a construction upon Chairman Woodrum's action, but merely pointed to the fact that the FCC is seeking to increase its budget from $1,700,000 to $2,300,000 for the coming fiscal year as a reasonable basis for more careful study of the commission's needs by the subcommittee.

Chairman Woodrum refused to comment one way or the other except to say that the delay was caused by the desire of most members of the committee to be present, which served to confirm the impression of those who guessed that some Representatives want an opportunity to call Chairman McNinch on the carpet. No date was set for the deferred hearing, but, inasmuch as the delay automatically defers completion of the appropriations bill itself, there was even some danger that the committee was "stalling" the FCC until its appropriation would become ensnarled with possible efforts at the next session to reorganize the basic commission set-up.

When the hearings are held, however, and if Chairman McNinch is sent up to the committee to represent the FCC (as seems to be expected), the chairman can expect a fairly warm session. The Congressmen are not likely to miss such an opportunity to question him about the recent "purge" within the FCC which ousted, among others, two staff officials with Civil Service rating. The continued conflict within the commission, the various radio broadcasting incidents, and the progress and conduct of the commission on its special telephone investigation are also likely to draw some fire. These hearings are usually held in executive session, but the transcript is made public when the completed appropriations bill is presented to Congress.

* * * *

OVER at the FCC itself, the reorganization steps of Chairman McNinch are continuing. Now that the former examining division has been abolished,

the legal staff, which will assume most of the duties of the defunct division, has been considerably revamped. To assist the new Acting General Counsel William J. Dempsey, the commission appointed William C. Koplovitz, his old legal team mate on the PWA power division and later on the legal staff of the Federal Power Commission. Like Dempsey, Mr. Koplovitz is a remarkably young man for the important position he holds; he will not celebrate his thirtieth birthday until next May.

The FCC legal staff has been divided into two sections, a broadcasting division functioning under Assistant General Counsel George B. Porter, and a common carrier division (telephone and telegraph) functioning under Assistant General Counsel James A. Kennedy. In addition, there will be a special division for litigation and administration functioning under Mr. Koplovitz.

* * * *

ASIDE from the progress on its radio monopoly investigation, the FCC handed down during the month of December four decisions of special interest to the telephone and telegraph industry. Probably the most important of these, from the standpoint of policy, was the commission's refusal on December 20th to grant the city of Seattle a permit to construct a ship-to-shore radio-telephone station to serve coastal harbor points near Seattle and adjacent Canadian waters. Such service would have been in competition with existing facilities privately operated. Commissioner Walker's dissent revealed that member's continued critical attitude towards the private telephone industry, in view of the fact that the commission's action was otherwise unanimous, except for Commissioner Payne who did not participate.

Grounds for the majority decision in the Seattle case were:

1. The operation of this station on the proposed frequency would create objecttionable delay and interference in the operation of existing ship stations licensed by this commission as well as to ship stations licensed by the Canadian government, which stations have a prior right to the use of the frequency in question.

2. The application is not consistent with the commission's rules and regulations or established policy, and no justification has been shown for a modification thereof.

3. Applicant has failed to conclusively demonstrate that effective service would be rendered to the public by the proposed station.

4. Existing radio-telephone facilities have not been shown to be inadequate.

5. Applicant has failed to show a substantial public need for the proposed service. The rates tentatively proposed, although slightly lower for some service, are without controlling significance when viewed from the standpoint of the rates and service to the area as a whole.

6. Public interest, convenience, or necessity would not be served by the granting of the application.

Commissioner Walker dissented, emphasizing that the applicant was a municipality and shipping one of its major industries. Citing situations in which the Federal government has given preferential treatment to public agencies, he took the view that substantial public need had been shown, that such competition as would be involved would be in keeping with the spirit and purpose of the Communications Act, and that there was a possibility that a different frequency from that applied for might be made available. Accordingly, he felt the application should be denied without prejudice to the right of the applicant to apply for some other frequency.

ON December 12th the commission granted the Southwestern Bell Telephone Company authority to acquire and operate toll lines of the United Telephone Company of Kansas. These toll lines, 21 in number, were acquired for use in interstate commerce and were so certified by the commission.

On December 5th the FCC authorized the same Southwestern Bell Telephone Company to add one cross arm and six wires to its Texas pole lines between Dallas and San Antonio and between

Dallas and Houston. This was a jurisdictional case involving a construction of §214(a) of the Federal Communications Act, and attracted the appearance of the National Association of Railroad and Utilities Commissioners.

The telephone company conceded that a certain amount of interstate toll traffic would be routed over the new facilities but argued that because the predominant use would be in intrastate commerce and because the new facilities would merely "supplement existing facilities," and because the lines and all terminals thereof were physically in intrastate commerce, the FCC had no jurisdiction over such construction.

The National Association of Railroad and Utilities Commissioners took a similar position. But the FCC decided that, in view of the fact that the lines would admittedly handle an undetermined amount of interstate traffic, Federal jurisdiction was warranted. The action of the FCC in this case was merely to authorize by confirmation facilities already actually constructed.

Also on December 5th, the FCC ruled that the Mackay Radio & Telegraph Company may not extend its telegraph service into territory not heretofore served by it by the device of leasing a telegraph circuit from another carrier without first securing a certificate of approval from the FCC. This was also an interpretation of §214 of the Communications Act.

* * * *

INDICATIONS that the promotion of rural electrification may have some effect on rural telephony was seen in a recent discussion of the North Carolina Rural Electrification Authority to determine the possibility of a survey on rural telephony in the Tarheel state. The discussion was held in Raleigh, N. C., on December 15th in an effort to decide whether there is a demand for a rural telephone promotion program similar to rural electrification work already engaged in by that agency.

Dudley Bagley, authority chairman, said the 1939 general assembly might be asked to provide an appropriation for an engineer to make a statewide study. If a demand is found for a rural telephone program, he said, the 1941 general assembly might be asked to make an appropriation for it.

The North Carolina state grange has asked the authority to inaugurate such a program.

* * * *

THE United States Independent Telephone Association is still undecided whether to fight the recent ruling of the Wage-Hour Administration that local independent telephone exchanges are subject to the Fair Labor Standards Act of 1938, in the courts or in Congress. But it is apparently resolved to fight and has not backed up one inch from its previous position that §13(a) (2) of the act, which exempts "service establishments," should be applied in favor of local independent telephone exchanges whose business is predominantly intrastate. In a letter sent to its member companies on December 12th, the United States Association stated:

> The desire to pay wages comparable with other industries and to provide working conditions equal to those of other industries is just as inherent with the independent telephone industry as with others, but working conditions in the small telephone exchanges are so different from those in most commercial or industrial organizations that the United States Independent Telephone Association feels justified in claiming recognition for these differences in occupation.
>
> It is believed that the Wage-Hour Administration recognizes the plight of the small independent telephone exchanges. This being so, it is expected that the proposed conference between the administrator and representatives of the association will find a way to eliminate any doubt of their being subject to the act.

The association's letter went on to suggest that small exchanges operated under contract or agency agreements, if definitely held subject to the Wage-Hour Act, should have the benefit of consideration for the actual time consumed in operation of such exchanges. The association's letter advised its member companies:

> (1) The management of every exchange should compute the time which the operator actually works at the switchboard. In com-

puting wages, due consideration should be made for rent, light, heat, etc., if properly part of the operator's compensation.

(2) It would advise the securing of rate increases which in the majority of the cases of small companies have long been needed.

(3) It recommends compliance with the 25-cent-per-hour, 44-hour-per-week provisions of the Wage-Hour Act on the part of all companies that find themselves financially able to do so.

THE first step presumably would be an attempt by the association through conference with Wage-Hour officials to obtain a reversal or at least a modification of the jurisdictional ruling indicated in the report of the Wage-Hour Administration's general counsel, released December 7th. Failing this, the association's letter to its membership hinted that there was a strong possibility of a "legal test."

However, the association's letter went on to say that it was also possible, with the assistance of member companies and owners of small exchanges, to secure an amendment to the act by the new Congress. It pointed out that weekly and semiweekly newspapers of less than 3,000 subscribers are now expressly exempt from application of the act and added that telephone companies with less than 3,000 subscribers should also be exempt.

Because of the broad implications arising out of the Supreme Court's decision in the recent Consolidated Edison Case, it was believed the association would have a better chance with Congress than with the courts. Although the Consolidated Edison Case involved an interpretation of the jurisdiction of the powers of the NLRB rather than those of the Wage-Hour Administration, legal observers were generally disposed to see in the court's opinion the likelihood that Federal authority to regulate labor standards of local utilities would, in the final analysis, be held just as extensive as the Federal authority to regulate labor relations of such utilities.

* * * *

IT pays sometimes to have your name begin with one of the first letters of the alphabet instead of the latter letters. At any rate, so thought thousands of Ohio telephone subscribers with names beginning with "A," "B," and "C," who received refund checks from the Ohio Bell Telephone Company in time to do their recent Christmas shopping, while their neighbors with such names as Walker, White, Young, and Zimmerman went walking around with long faces.

This inequity will come out all right in the end, of course, but the initial disbursement of checks to the ABC folks was the only feasible way the Ohio Bell Telephone Company could think of to start its distribution of some $7,500,000 refund which will be made out of excess telephone rate collections between March, 1926, and December, 1931. The refunds grew out of the recent settlement of the long-standing rate controversy between the company and the Ohio Public Utilities Commission.

The company's principal difficulty in handling such a colossal refund is in locating subscribers who took service between the periods covered by the refund and who have since changed their residence one or more times. There is also the understandable difficulty of certifying claims even after subscribers have been located. Subscribers whose names begin with "D" and farther down the alphabet will be notified when they should make application.

* * * *

ON December 21st, the A. T. & T. filed a supplemental brief replying to the so-called Walker Report on the FCC special telephone investigation. The supplement (an addition to the regular Bell reply brief filed on December 5th) was generally limited to alleged misstatements and errors in the Walker Report which were outside of the scope of its own conclusions and recommendations. The regular Bell brief replied to that portion of the Walker Report which directly related to its conclusions and recommendations. Both documents were highly critical of the Walker Report, which was charged with unfairness, inaccuracy, and inadequacy. In addition, the supplemental brief contained a special chapter on Bell "noncommunications activities."

Financial News and Comment

By OWEN ELY

Electric Output to Gain At Least 38 Per Cent in Coming Decade

In a recent article in *Barron's,* "Future Market for Utilities," John B. Weed estimates a 38 per cent gain in electric output during the coming decade, with a possible maximum increase of 54 per cent. Mr. Weed argues that while gains in recent years averaged well above the 7.3 per cent annual growth which would be necessary to double power output by 1947, these gains represented recovery from the depression and cannot be expected to continue. While domestic consumption increased 130 per cent in the decade ended 1937, one-third of this was due to electric refrigerator use, which gained seventeenfold; and nearly one-sixth more was accounted for by the radio. Excluding these important items, the net increase would have been only 67 per cent. While electric ranges and water heaters, both heavy consumers, now have a promising future, both are expensive to operate except in extremely low-rate regions, and hence growth from this source may not be of great importance.

In arriving at his 1947 estimate of domestic consumption, Mr. Weed assumes an annual gain during the coming decade equal to that in 1937, but limited to 100 per cent "saturation" of wired homes, and arrives at a possible (but not probable) 10-year gain of 87 per cent. (See the accompanying table prepared from data in *Barron's.*) New and more efficient lighting methods and more efficient appliances will, he thinks, reduce kilowatt-hour consumption, while many families will never be able to afford the luxury of electric refrigerators. Operation of electric ranges can hardly reach the indicated 22 per cent of all homes and little increase in washing machines

DOMESTIC ELECTRIC CONSUMPTION—1937-47

	Total Kwh. Consumed (billions) 1937	*Est.* 1947	*Est. Per Cent* Gain
Lighting and misc.	6.37	8.87	38%
Domestic Machines and Appliances:			
Refrigerators	3.84	8.58	123
Radios (socket sets)	1.82	1.90	4
Ranges	1.64	5.14	213
Flatirons	1.44	1.48	3
Water heaters	1.20	3.73	211
Oil burners	.30	.76	153
Washing machines	.26	.45	73
Vacuum cleaners	.22	.34	55
Toasters	.16	.20	25
Electric clocks	.15	.32	113
Ironing machines	.12	.27	125
Percolators	.11	.11	..
Roasters	.10	.68	580
Space heaters	.09	.15	67
Irrigation	1.45	3.00	107
Total	19.27	35.98	87%

is likely. On the other hand, oil burners and water heaters may show a good increase. Mr. Weed does not expect much electric gain from air-conditioning equipment since gas or steam may be largely used for commercial installations. After careful analysis of the various factors in the "domestic" load, Mr. Weed concludes that his 87 per cent estimate is too high and that 50 per cent is a more likely possibility.

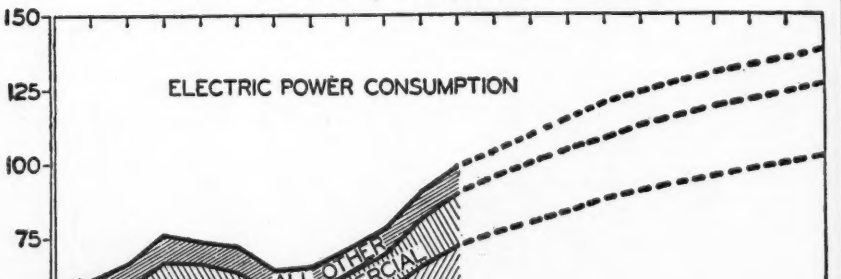
Projecting the industrial use of electricity, he concludes that the probable growth would be 23 per cent greater than the rate of gain in industrial activity; and with the latter figured at only 10 per cent for the decade, a net total of around 35 per cent is indicated (see Chart II). Due to the continued decline of the traction industry, "miscellaneous" use of electricity may expand only 20 per cent, but commercial users might step up their kilowatt hours 40 per cent. Mr. Weed concludes:

> Combining these with the probable estimates of a 50 per cent gain for domestic and a 35 per cent gain for industrial use, an increase in electric consumption of 38 per cent is indicated during the next decade (see Chart I). Taking the overly optimistic maximum estimates of 87 per cent for domestic and 53 per cent for industrial, the gain would not be over 54 per cent.
>
> While these conclusions may be disappointing to the utility investor who has been looking for miracles, any one willing to face the facts will realize that very few of our major industries hold out so promising an expectation as a 38 per cent increase in volume over the next ten years. Even though taxes may continue to rise by a more than reasonable amount and electric rates be arbitrarily forced to lower levels, the holder of sound electric utility securities can still look to the future with a considerable degree of confidence.

MR. Weed's estimates, in the opinion of this department, seem a little on the conservative side. Consolidated Edison's remarkable success in its recent sales of appliances at a low combination price indicates that the public is still anxious to buy them. Insufficient allowance may also have been made for the possible stimulus to be afforded by (1) the residential boom now getting under way, (2) probable demands of commercial television sets, (3) use of portable air-conditioning or other low-priced residential ventilating devices, (4) development

CHART I

Electric Power Consumption and Probable Future Trend



Domestic consumption as shown in this chart includes residential and farm use.

of electric house heating, (5) automatic-control house lighting, and possible new inventions. He also seems ultraconservative in estimating only a one per cent gain per annum in business, for until recent years the average rate of gain was considerably higher. During the two decades ending 1925, industrial production as measured by *Standard Statistics'* index doubled, with an average annual gain of 5 per cent. In the next four years gains averaged about 3 per cent, but by 1937 we were back to the 1925 level (and in 1938, back to that of 1915-16).

Since industrial consumption is by far the greatest part of the load (though less important from the standpoint of revenues), Mr. Weed might have devoted more of his attention to exploring the probabilities in that field. However, with domestic and foreign politics apparently the supreme factor in future business growth, all attempts at forecasting must concede that psychological and imponderable factors weigh heavily.

New Financing

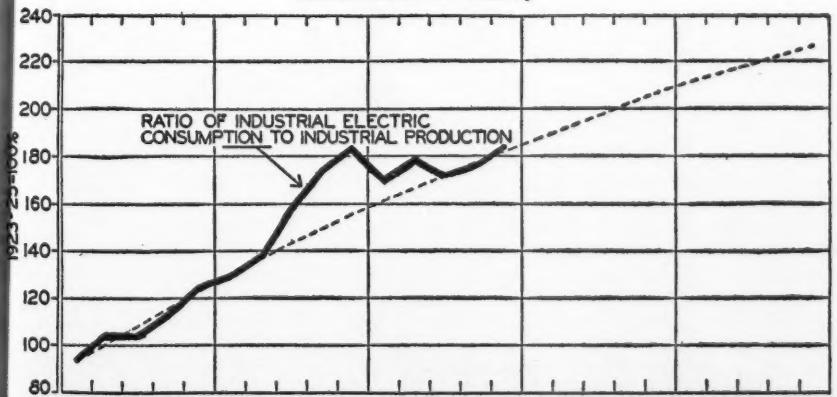
THE 375,000 shares of North American Company common stock offered December 7th by a syndicate headed by Dillon, Read & Company proved quite successful despite the rather poor timing of the offer marketwise, and the stock has since recovered a point or so. The size of the offering had, however, been reduced considerably, possibly because of market conditions. The offering, as previously outlined in this department, represented the sale of stock held by various Harrison Williams investment companies and was designed to reduce their holdings below the 10 per cent level.

New financing during the fortnight ended December 17th included the two Central Illinois Public Service issues—$38,000,000 first 3¾s offered at 100½ and $10,000,000 serial debenture 3½-4s, offered on a 1½-4 per cent basis. These issues afforded the first major test of the bond market for new corporate issues in over a month. According to *The New York Times:*

> Underwriters reported . . . that the bulk of both the bonds and debentures had been placed and that only the late maturities of debentures and a few of the mortgage bonds remained available. The demand was said to be especially well diversified, with savings bank buying an important factor in most of the New England

CHART II

Electrification of Industry



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states, where the first mortgage bonds are regarded as legal investments for those institutions.

International Telephone & Telegraph Corporation has announced plans for $15,000,000 financing for South American expansion; $10,000,000 was taken by the Export-Import Bank of Washington in the form of 4½ per cent serial notes to yield about 5¼ per cent, and the remaining $5,000,000 by a group of New York banks. These loans complete the program of the company for liquidating its maturing debentures and short-term bank debt, which amounted to approximately $60,000,000 on January 1, 1937.

El Paso Natural Gas Company has sold privately to a group of insurance companies and an educational institution $6,000,000 first mortgage 3½ per cent bonds due in 1953 and has obtained from the Chase National Bank a loan of $4,000,000, represented by serial notes due over seven years. Proceeds from the sale of the securities will be applied to the redemption of all the company's outstanding first mortgage bonds and convertible debentures and the payment of bank loans in the amount of $600,000.

ANOTHER piece of institutional financing was disclosed in the recent announcement that Brooklyn Edison had arranged to sell $4,240,000 consolidated mortgage 3s to insurance companies. The amount of financing placed privately with large insurance companies continues to concern investment bankers. It is estimated that such financing amounted to $500,000,000 last year, and this year's total may run even higher.

Public Service Company of Colorado has withdrawn, with SEC consent, its registration of $40,000,000 first 3¾ per cent bonds due 1963, $10,000,000 debenture 4s due 1948, and 50,000 shares of 5½ per cent first preferred stock. An eleventh hour request by the SEC for additional information resulted in the request for withdrawal, instead of the usual practice of filing amendments, apparently because the company wished to defer the financing until after the holidays. The bonds and debentures were to have been offered by a banking group headed by Halsey, Stuart & Co., Inc. and the preferred stock by a syndicate organized by the First Boston Corporation.

SEC Concession Aids Equity Underwriting

THE SEC has announced adoption of a rule under the Securities Act of 1933 which will exclude from the category of underwriters, and thus from the civil-liabilities provisions of the act, persons and institutions whose connection with a distribution of securities is confined to supplying secondary capital by buying, primarily for investment, any securities remaining unsold in the hands of the underwriters at the conclusion of a public offering.

W. O. Douglas, chairman of the SEC, emphasized that the rule was not designed to remove from the classification of underwriters those who are now underwriters and permit them to escape liability. Under the act the underwriters would not be permitted to enter into contracts with those supplying the secondary capital before the registration statement became effective. It is understood, however, that intention to seek contracts may be indicated in the registration statements. All information as to such contracts, Mr. Douglas said, would be filed with the SEC so that it would have a full check on all operations connected with an offering of securities.

The new rule is expected to prove of considerable value to underwriters since it relieves insurance companies, investment trusts, and other large private buyers from civil liability as underwriters, and opens up to underwriters this important secondary market in the event that public distribution of a security offering fails. This would be particularly helpful in case of convertible bond and stock offerings, which are always subject to temporary price fluctuations, due to general market factors which have little to do with the intrinsic value of the security.

Power Production Continues Up Trend

ELECTRIC power output has continued its recent advance. During the week ended December 10th, New England led all other geographic regions with a gain of 16 per cent over last year. Other areas making a favorable showing were the Middle Atlantic, Central Industrial, and Pacific Coast, but all groups showed some gains over the previous year, the net average for the United States being 6 per cent. The accompanying chart shows the trend of *The New York Times* electric power index, which is adjusted both for seasonal and long-term trends. For the week ended December 18th (just reported at this writing), electric output set a new high mark.

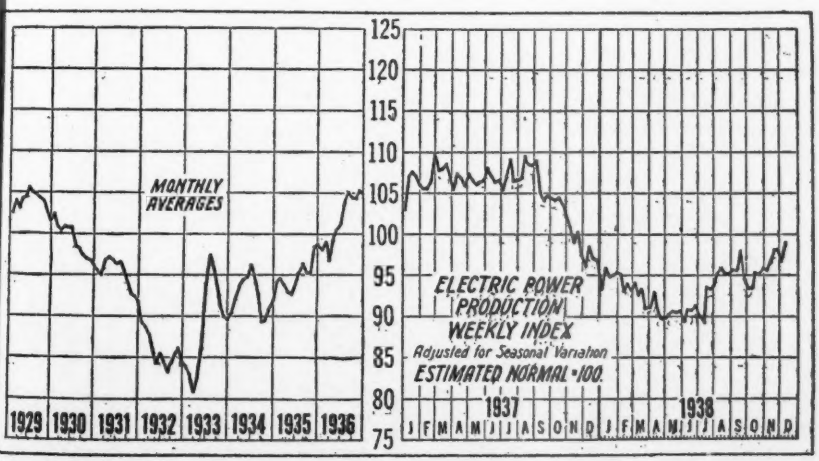
Corporate News

THE SEC has denied for technical reasons the application of the Washington Railway & Electric Company for exemption as a holding company under the Utility Act.

The SEC has reported favorably on the plan of recapitalization of Northern States Power Company of Delaware, involving subsidiaries of the same name incorporated in Minnesota and Wisconsin. One feature of the plan is to write down the value of the Class B common stock of the Delaware Company to nothing and terminate the voting rights of this stock on January 1, 1941. It is planned by the Delaware Company to write off about $29,000,000 in balance sheet items, representing its security holdings in the Minnesota and Wisconsin companies plus other items. Commenting on the general plan, the SEC said in its report that the steps to be taken by the three companies would improve their financial structure, provide more equitable distribution of the voting power in the Delaware Company, and accomplish other objectives of the Public Utility Holding Company Act.

The SEC has permitted the extension of $10,000,000 Laclede Gas Light bonds, due April 1, 1939, for three years.

Monongahela West Penn Public Service Company has requested permission from the SEC to issue 200,000 shares of $15 par value common stock to American Water Works & Electric Company for $3,000,000, to discharge an open account debt.



From The New York Times

INTERIM EARNINGS STATEMENTS

Electric and Gas	*No. of Months Included*	*End of Period*	*System Earnings per Share (a)* Last Period	Previous Period	Per Cent Increase	Per Cent Decrease
American Gas & Electric	12	Oct. 31 (b)	$2.16	$2.52	..	14
American Power & Light (Pfd.)	12	Oct. 31 (b)	5.40	6.36	..	15
American Water Works	12	Sept. 30 (c)	.36	1.38	..	74
Boston Edison	12	Sept. 30 (c)	8.30	8.86	..	6
Cities Service P. & L. (Pfd.)	9	June 30	14.35	15.75	..	9
Columbia Gas & Electric	12	Sept. 30	.36	.57	..	37
Commonwealth Edison	9	Sept. 30 (c)	1.68	1.38	22%	..
Commonwealth & Southern (Pfd.)	12	Oct. 31 (b)	8.00	10.62	..	25
Consolidated Edison, N. Y.	12	Sept. 30 (c)	2.23	2.16	3	..
Consolidated Gas of Baltimore	12	Sept. 30 (c)	3.95	4.67	..	15
Detroit Edison	12	Nov. 30	5.73	8.15	..	30
Electric Power & Lt. (1st Pfd.)	12	Oct. 31	6.29	12.34	..	49
Inter. Hydro-Electric (Pfd.)	12	Sept. 30 (c)	3.61	18.46	..	82
Long Island Lighting (Pfd.)	12	Sept. 30	2.60	7.74	..	66
Middle West Corp.	9	Sept. 30 (c)	.56	.40	40	..
National Power & Light	12	Oct. 31 (b)	1.27	1.32	..	4
Niagara Hudson Power	12	Sept. 30 (c)	.56	.87	..	36
North American Co.	12	Sept. 30	1.59	2.05	..	22
Pacific Gas & Electric	12	Sept. 30	2.42	2.84	..	15
Public Service Corp. of N. J.	12	Oct. 31 (b)	2.27	2.67	..	15
Southern California Edison	12	Sept. 30 (c)	1.92	2.26	..	14
Standard Gas & Elec. (Pr. Pfd.)	12	Sept. 30 (c)	3.21	11.19	..	71
United Gas Improvement	12	Sept. 30 (c)	.97	1.12	..	13
United Light & Power (Pfd.)	12	Oct. 31	6.47	8.62	..	25
Gas Companies						
American Light & Traction	12	Sept. 30	1.40	1.82	..	23
Brooklyn Union Gas	12	Sept. 30 (c)	2.14	2.37	..	10
Lone Star Gas	12	Sept. 30 (c)	.83	1.06	..	22
Pacific Lighting	12	Sept. 30	3.92	4.50	..	13
Peoples Gas Light & Coke	12	Sept. 30 (c)	2.52	4.67	..	46
United Gas Corp. (1st Pfd.)	12	Oct. 31 (b)	12.94	24.67	..	48
Telephone and Telegraph						
American Tel. & Tel. (e)	12	Aug. 31 (c)	8.39	10.46	..	20
General Telephone (f)	12	Sept. 30 (c)	1.55	1.61	..	4
Western Union Telegraph	12	Oct. 31 (b)	D1.54	2.35	..	..
Traction Companies						
Greyhound Corp.	12	Sept. 30 (c)	1.79	1.79	..	..
Twin City Rapid Transit	12	Sept. 30 (c)	D1.37	.96	..	..
Systems outside United States						
American & Foreign Power (Pfd.)	12	Sept. 30 (c)	6.77	7.70	..	12
International Tel. & Tel. (d)	9	Sept. 30	.96	1.10	..	13

D—Deficit.

(a) On common stock, unless otherwise indicated following name of company; in some cases, Federal surtax not deducted.

(b) Data also available for month indicated.

(c) Similar report also published for quarter ending same period.

(d) Excludes Spanish subsidiaries and Postal Tel. & Tel. Co.

(e) For ten months ended October 31st the parent company's earnings declined about 15 per cent.

(f) For the twelve months ended September 30, 1938, $1.86 per share was reported including the earnings (exclusive of fixed charges of parent company) of Indiana Central Telephone Company and subsidiaries for periods prior to August 31, 1938, date of completion of reorganization of Indiana Central Telephone Company and transfer of assets to General Telephone Corporation.

What Others Think

Highlights of the TVA Investigation

TESTIFYING before the joint congressional investigating committee on December 7th, J. A. Krug, chief power engineer for the TVA, rejected the proposal recently made before the committee by Wendell L. Willkie that the Securities and Exchange Commission should be selected as an arbiter to fix a reasonable price for the acquisition of the properties of the Tennessee Electric Power Company by the TVA. (Mr. Willkie is president of the Commonwealth & Southern Corporation which controls the Tennessee Electric Power Company.)

Mr. Krug said that Mr. Willkie's plan was impracticable, unworkable, and "studded with jokers." He added that he was authorized to speak for the TVA board of directors. Mr. Krug said all municipalities in the Tennessee valley would refuse it, as Chattanooga had already done, because it would mean further delay in getting cheap TVA power and would require them to "enter the power business blindfolded."

Mr. Krug called Mr. Willkie's agreement to bind himself "meaningless" because he could not bind his stockholders; and he asserted that the plan was illegal under the TVA Act because it would prevent TVA from selling power outside a "Chinese wall."

The proposal would amount to arbitration of how public money appropriated by Congress should be spent and therefore was of "dubious legality," Mr. Krug stated, so that its acceptance would lead to "years of litigation," whereas an "immediate solution" was needed.

He said that TVA had made an offer to buy which was "practical, expeditious, and beyond legal question," and which was still open for Mr. Willkie's consideration.

"We have offered to purchase facilities in an area which will absorb our entire power output from the TVA projects, present and proposed," he went on. "If this proposal were accepted, C. & S. operations outside this area would be immediately stabilized so far as TVA's activities affect them.

"We propose the acquisition of integrated systems, with the price to be determined by negotiations around the conference table. We have suggested that actual legitimate cost less accrued depreciation be given primary consideration in determining a fair purchase price."

MR. Krug said that TVA had spent "thousands of dollars" in having an accounting firm, "with the approval of Mr. Willkie," determine the basic facts required for fixing a fair price, and filed a report of this inquiry with the committee.

Following the TVA engineer's testimony, Mr. Willkie made public a reply attacking Mr. Krug's objections to arbitration as "entirely without merit." The utility executive said that the TVA arguments against arbitration and against limiting the area of TVA competition were "purely legalistic," and that lawyers who had examined the TVA Act disagreed with Mr. Krug.

Saying he wished to allay any doubt of legality, however, Mr. Willkie suggested that when Congress met in January it could pass the necessary legislation on both these points to enable TVA to accept his proposal. He also agreed to have the SEC limited to sixty days in determining a fair price for his property, adding that this would prevent any delay, and he offered to pay all costs SEC might incur in employing engineers and others to fix the value.

After asserting that the contention that his plan would cause municipalities to enter the power business blindfolded "comes rather strangely from TVA," Mr. Willkie said:

> No difficulty arose on the points raised by Mr. Krug until we refused to accept the price proposed by TVA. A negotiation at a conference table where one of the parties had a club in the form of free Federal money with which to duplicate is not negotiation—it is coercion.
>
> The duplication of utility properties with Federal funds or the combined efforts of the PWA, TVA, and power boards to force the utilities to sell their properties at less than their true value is preventing a building program on the part of the utilities throughout the country in the next few years running into billions of dollars. No greater single thing could be done to restore economic prosperity than the working out of this problem on a fair and rational basis such as I propose.
>
> Again we plead with the Federal government in simple justice not to destroy these properties but to repay to the investors the money which they have invested in them or their value as appraised by the SEC.

THE utility chief charged that TVA "with the use of coercion wants to buy their properties at a price at which the yardstick rates will work irrespective of their value." He said that the talk of Chattanooga rejecting the proposal was "mere words," since "the Federal government is furnishing Chattanooga with all its funds for their utility program," and "that city's power board will do whatever the Federal government suggests."

Mr. Krug in his testimony denied that TVA was trying to get the price for utility companies it purchased down low enough to justify its yardstick rates. He asserted that the TVA rates, both wholesale and retail, were based on "actual legitimate costs of production," and that they complied 100 per cent with the rate-making provisions of the TVA Act, designed to promote increased use of electric power in homes and farms.

Since TVA was established in 1933, he said, statistics reveal that the four states most affected by TVA, Tennessee, Georgia, Alabama, and Mississippi, had shown an increase in rural electrification double that for the country as a whole.

Denying that TVA had tried to destroy existing investments in the utility business, he said its policy was to build "supplementary" rather than "duplicate" transmission and distribution facilities.

It had not used PWA grants as a threat to compel the utilities in the area to sell their property at an "unreasonably low price," he insisted, but had only tried to buy such properties at prices fair to the government and the taxpayers.

Challenging testimony by Dr. Arthur E. Morgan, former TVA chairman, and engineer experts of the power companies that TVA was selling power at a loss and that the taxpayers would have to make up huge annual deficits under the yardstick rates, Mr. Krug testified that the TVA rates rested on a "financially sound basis."

WHEN the 10- or 11-dam system was in full operation about 1946, he said, the present wholesale rates would produce revenues of $20,000,000 a year, "sufficient to cover all the cost of producing and marketing the power, including all the special costs of power operations; a fair portion of the common costs of the dams and reservoirs, depreciation, taxes, and interest on the government's investment, with a margin of $3,000,000 a year for contingencies and to offset losses occasioned during the development period."

These losses, he said, were caused largely by litigation started by the power companies, which had prevented TVA from selling its full output.

Mr. Krug testified that the retail rates at which municipalities and rural coöperatives sold TVA power to farms and homes under contract terms dictated by TVA, not only covered all "reasonable distribution costs with a substantial margin of safety," but were actually "too high for urban communities having reasonable densities and a reasonable opportunity to develop their markets."

Instead of the TVA rates driving private companies out of business, he said, they were increasing the consumption of electricity, so much that by the time the

Chicago Tribune

WHEN IT'S LAMP LIGHTING TIME IN THE VALLEY

whole TVA system was complete, eight years from now, the combined facilities of TVA and the private companies would be unable to meet the demand.

"The operations of TVA and its resale contractors," he asserted, "afford the nation a fair and useful standard of comparison, or 'yardstick', if you like the term, of how much the public should be expected to pay for electric service and how widely it should be extended."

Senators Bankhead and Hill of Alabama testified on December 7th charging that TVA was violating the terms of the TVA Act by maintaining its real headquarters, or "principal office," at Knoxville, Tenn., instead of at Muscle Shoals, Ala. They demanded that it be forced to transfer its headquarters to Muscle Shoals.

Senator Bankhead cited a statement made by Justice Black when the latter was a Senator from Alabama, in a letter to A. E. Morgan, that the TVA directors were guilty of "a plain, palpable violation" of the act in this regard.

APPEARING for the second day (December 8th) as witness for the TVA in the absence of TVA Director David E. Lilienthal, who was understood to be indisposed on account of illness, Mr. Krug presented evidence tending to justify the "yardstick" rates as an "honest and legitimate" basis for comparison with rates of private utility companies. He submitted a statistical statement which included cost allocations on the proposed 10-dam TVA system prepared by Colonel T. B. Parker, TVA chief engineer, as justifying his contention that the TVA rate schedules are sufficient to defray not only costs of power operations but the eventual amortization of nonpower investment in addition to returning a profit thereon.

Under the 10-dam set-up which is scheduled for operation in 1946, present rates would allow TVA power sales revenues of $20,251,000 a year, upon which Mr. Krug said there would be an annual profit of approximately $3,146,401.

This evidence was in contrast with annual deficits of three to ten million dollars previously predicted by ex-TVA Chairman A. E. Morgan and Dean E. W. Moreland of the Massachusetts Institute of Technology (utility witness). The exhibit showed an ultimate cost of the 10-dam system of $407,809,864, exclusive of switchyards but including an installed generating capacity of 1,401,500 kilowatts. The total cost was segregated as follows: $108,884,965 for power, $44,880,000 for navigation, and $33,063,000 for flood control. The balance or "multipurpose" cost was allocated at 36.1 per cent to power, 32.2 to navigation, and 29.7 per cent for flood control. (This would make an overall cost allocation of 47.3 per cent to power, 28.4 per cent to navigation, and 24.3 per cent to flood control.)

The exhibit followed the "alternative justifiable expenditure" theory of cost allocation under which the direct cost for any one purpose corresponds to the investment which could have been eliminated from the total project cost if that purpose had been excluded.

SUPPLEMENTING the exhibit prepared by Colonel Parker, Mr. Krug testified that there would be an additional ultimate cost of $86,283,000 for transmission lines, substations, and other incidentals bringing the total ultimate cost of the 10 projects to $494,092,864. He estimated the total investment in power at $279,141,208 of which $108,884,965 would be for generation, $84,283,000 for transmission, $2,000,000 for general property, and $83,973,243 for power allocation of multipurpose facilities.

Of the eventual power production capacity of 8,110,000,000 kilowatt hours a year, 4,250,000,000 will be primary, 2,300,000,000 secondary, and the balance "dump." Mr. Krug's estimate of eventual revenues assumed the sale of all primary and secondary power and part of the "dump."

Annual operating costs of the 10-dam system were estimated by Mr. Krug at $13,620,404, divided as follows: $3,087,000 expenses, $3,480,420 depreciation, $3,213 amortization, and $1,012,550 payments in lieu of taxes, $5,855,039 interest, $136,297 interest during construction, $45,885 workmen's compensation. To this was added $3,484,195 of annual joint costs allocated to power, making a current total annual operating cost for power of $17,104,599. Deducting this figure from anticipated gross revenues of $20,251,000, Mr. Krug arrived at an annual net profit of $3,146,401. Estimated revenues were based on a 60 per cent load factor for primary power which would account for $15,617,300 on an average rate of 3.675 mills per kilowatt hour for all classes of primary power sales (including, in addition to large industrial customers, municipalities and rural coöperatives whose composite rate averages 4.60 mills per kilowatt hour). Mr. Krug concluded:

> **Assuming that the remainder of the available secondary energy, after deduction of transmission losses, is sold at a rate of 2.1 mills per kilowatt hour, the estimated annual revenue from sale of secondary power is $4,133,750. This revenue corresponds to an average rate for secondary energy of 1.797 mills per kilowatt hour for each kilowatt hour of net secondary generation.**

It is estimated that $500,000 could be realized from the sale of a part of the available dump and off-peak energy.

On the basis of the foregoing calculations, the total revenue from the sale of the power available from the 10-plant system is estimated to be $20,251,000.

ON December 9th, Mr. Krug offered the committee financial statements of 43 municipalities and 19 rural coöperatives now selling TVA electricity to residential consumers. He contended that municipalities were, on the whole, operating profitably, which offset deficits of rural co-öps which were conceded to be still operating in the red to such an extent that some of them might have to "fold up."

Mr. Krug's presentation of the case for TVA drew compliments from the committee members, including Representative Wolverton of New Jersey, outstanding TVA critic. However, he was cross-examined by both Representative Wolverton and Representative Jenkins of Ohio.

The consolidated financial statements submitted by the witness for all municipalities and rural coöperatives using TVA power showed $492,704.91 aggregate earned surplus to date, including $163,708.65 for the fiscal year ended June 30, 1938. The 1938 statement showed 80,702,411 kilowatt hours sold, with operating revenues of $1,552,746.74.

Operating revenue deductions for the year ended June 30, 1938, were $1,259,470.38, including $518,404.21 for power, $170,290.62 for distribution expenses, $80,685.30 for customers' accounting and collecting, $7,979.33 for sales promotion expenses, $91,275.29 for administration and general expenses, $241,829.04 for depreciation and amortization charges, $140,006.70 for taxes "or equivalent."

Net operating revenues were $293,276.36, other income bringing gross income to $328,734.39. Interest requirements of $139,736.97 left net income of $188,997.42. A deduction of $25,280.17 for a 6 per cent payment to general funds of municipalities as interest on investment left $163,717.25 transferred to earned surplus.

Mr. Krug's figures for the municipalities alone showed sales of 51,649,133 kilowatt hours in the year ended June 30th, with operating revenues of $946,670.67, net operating revenue of $269,143.05, net income of $234,569.01, and a balance of $209,270.17 transferred to earned surplus.

FRANCIS BIDDLE, committee counsel, brought out that the rural coöperatives as a group failed to earn all interest requirements, having a deficit of $45,571.19 for the 1938 year.

The figures offered showed that the coöperatives sold 29,053,278 kilowatt hours during the year, had operating revenues of $606,076.07, net operating revenues of $24,133.31 and gross income of $32,867.93, or $45,571.26 short of meeting their interest requirements of $78,439.19. The depreciation and amortization charges were $139,759.97.

Mr. Wolverton asked whether the witness would be as confident of the success of TVA wholesale rates "if TVA were on its own, the same as a private utility," so that it had to allow 15 or 16 per cent for taxes instead of 5 per cent, had to do its own financing and auditing, and had to meet other costs applicable to private business.

Mr. Krug replied that his calculations included "all costs properly charged with respect to TVA operations, even taxes." He asserted that in addition to the 5 per cent paid in lieu of taxes by TVA to the states in which it operates, the 15 per cent profit he estimated when the complete 10-dam system was in full operation would make a total of 20 per cent applicable to taxes, or much more than the average paid by utility companies. This, he said, was 12.5 per cent, according to a report by the Federal Power Commission.

The witness asserted that the TVA example was lowering rates and increasing electrical consumption all over the country. Asserting there was still a large undeveloped market for residential use of electricity, he predicted an average

residential use of 2,500 kilowatt hours a year in the Tennessee valley in the next few years. He produced charts showing that the customers of the first 12 municipalities taking TVA power had an average residential consumption of 1,465 kilowatt hours in 1938, or two-thirds more than the national average of 816.

ON December 10th the committee heard from Representative Rankin, Democrat, of Mississippi, who opened a scathing attack on the privately owned electric utility industry in the United States, denouncing it as "the most powerful and corrupt influence ever organized in a civilized country."

Rankin, who was the House sponsor of the original TVA Act offered by Senator Norris of Nebraska, compared the utilities with Fascism in his testimony. In this portion of his statement he received the approval of Senator Schwartz, Democrat, of Wyoming. Rankin, who based his charges apparently on testimony before the Federal Trade Commission utility investigation which began ten years ago, made a broad attack on the utilities, asserting their leaders had "tried to intimidate the courts," had "bribed legislators directly and indirectly," and had "attempted to influence the press in some sections," and "even tried to influence the churches."

Rankin said utility companies were overcharging the American public by more than $1,000,000,000 a year, saying: "It's no wonder they have even tried to write the school textbooks in the past."

Chairman Donahey, of Ohio, broke in to comment:

"Public utilities in Ohio have collected more from the people than all of the combined taxes."

Utility spokesmen present at the hearings later issued statements answering the Rankin assertions. C. W. Kellogg, president of the Edison Electric Institute, characterized Rankin's remarks as "fallacious and deliberately misleading . . . an unfair attack at a time when restored confidence to investors and encouragement to initiative is badly needed."

He said Rankin's figures were "ridiculous" and "false," denied that TVA's low rates had forced down power rates, and charged on his own account, that "since the TVA went into operation at Tupelo (a Mississippi town in the TVA area) the largest mills, largest employers of labor in that city, have shut down and gone out of business."

THOMAS W. Martin, president, Alabama Power Co., said:

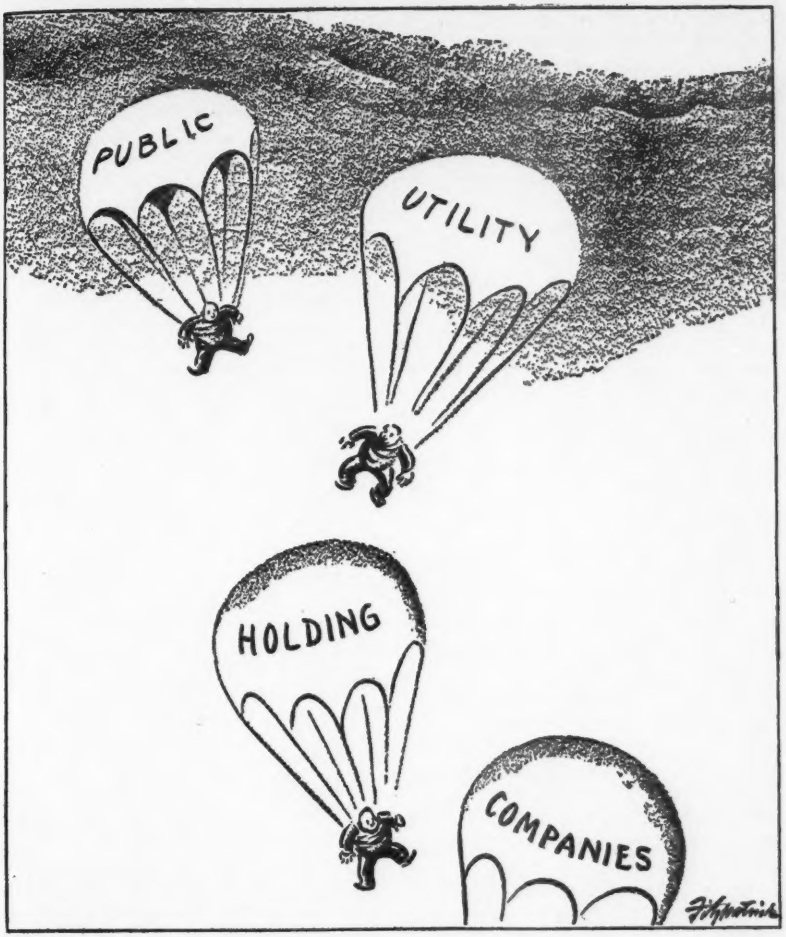
> The statement by Mr. Rankin that the Commonwealth & Southern Corporation, through the Alabama Power Company, bought firm power at 2 mills from Muscle Shoals prior to TVA's taking that plant over and resold it at 10 cents is the bunk . . . This power was distributed throughout Alabama at uniform rates under regulation of the state commission. This method of making uniform rates throughout the state of Alabama was specifically praised by President Roosevelt, then governor of New York.

Meanwhile, the committee received a report from Charles W. Smith, head of the Federal Power Commission Bureau of Accounts; W. E. Baker, chief accountant; and others of the bureau charging that the TVA "does not even substantially comply" with Federal requirements for power cost accounting.

The report was based on technical objections to the TVA's accounting system.

ON December 12th Mr. Krug again rejected Mr. Willkie's proposal for arbitration of TVA differences with Commonwealth & Southern over the value of the latter's properties, repeating that it was "loaded with jokers and intended only to confuse the issue."

Mr. Willkie had stated that over the intervening week-end TVA had offered $67,000,000 to be paid by itself and local agencies in the TVA area for Tennessee Electric Power Company properties, whose value had been fixed by the Tennessee utilities commission at $94,000,000. Mr. Krug disputed the statement that the value of these properties had been fixed at $94,000,000 by the Tennessee commission, but Mr. Willkie in a subsequent statement insisted that the figure was correct, being based upon a



St. Louis Post-Dispatch

COMING DOWN GRACEFULLY

former finding of the Tennessee commission brought up-to-date by routine audits of subsequent additions.

On December 13th Mr. Krug underwent his most intensive cross-examination and admitted that the TVA power business was $1,000,000 in the red last fiscal year, including interest and depreciation, but predicted that it would make a substantial profit on the same basis this fiscal year. He explained that the three dams in operation were able to sell only 40 per cent of their output last year and would have shown a profit if they could have sold their entire production. He blamed "obstructive litigation" for the loss. He listed TVA power revenues last year at $2,355,000 as against anticipated four to five million for the current fiscal year. He also reminded the committee that TVA is still in its development period and that operating losses to date have no bearing on the $20,000,000 annual revenues and $3,000,000 annual

profits which he previously predicted for the ultimate 10-dam operation.

MR. Krug admitted that TVA had not kept its accounts in "perfect order" and added his own belief that it should in the future "conform" closely to the uniform system of accounts for public utilities laid down by the FPC.

Senator Davis of Pennsylvania agreed that Mr. Krug's testimony had shown the "absolute necessity of a complete accounting of all TVA matters by accountants who have no connection with TVA."

Senator Davis intimated that in view of the fact that the committee was required to have its report ready for Congress on January 3rd, he hoped to obtain from the new Congress additional time (and presumably funds) for accountants to complete an inquiry into TVA books.

The committee's investigation had been earlier described by Senator Davis as "85 per cent accounting."

Mr. Wolverton caused the witness to admit that the TVA books for the early years of operation showed different figures for power revenues than those submitted to Congress in the annual reports of the TVA. The witness explained that these were due to "adjustments" made to correct errors, and they were "minor" items which made no difference in his estimate of ultimate power revenues and profits.

In reply to Mr. Wolverton's questions regarding FPC criticisms of the number of these "adjustments," Mr. Krug said that changes in accounting methods have recently been made and that there will not be so many "adjustments" in the future.

IN answer to further questions Mr. Krug admitted that he did not know why the TVA had not entered depreciation in its books in the past, and that "under ideal accounting conditions," the authority might have avoided FPC criticism for its delay in making calculations on the allocation of the common costs of the dams to power, navigation, and flood control in disclosing its rate base.

Mr. Krug agreed with Representative Wolverton that the criticism of the FPC was entitled to much attention because the latter was a Federal agency "not unfriendly" to the TVA. Concluding his testimony for the day, Mr. Krug stated in part:

> The major elements which determine the rate at which power can be sold to the ultimate consumer are interest, taxes, the cost of wholesale power, and the ordinary distributing costs, such as labor, materials, and overheads. The authority's wholesale rate is not different from the wholesale rates at which private companies are selling power. Yet municipalities purchasing power from TVA are substantially underselling these private utilities in the retail market.

At the request of Representative Jenkins, Francis Biddle, committee counsel, introduced in evidence a PWA statement showing its grants actually made to municipal electric plants taking TVA power through October 1, 1938, were $1,605,877 and its loans $2,155,700.

Mr. Jenkins asserted that the total allotments for grants and loans were about $15,000,000 and that all allotments made, whether the money has actually been given and lent or not, still constitute a threat of duplication against private companies operating in the area if they do not agree to sell their properties to the TVA and the municipalities at terms dictated by the TVA.

On December 14th Mr. Krug said that $67,000,000 was TVA's "top price" for Tennessee Electric Power Company holdings. The committee also received on that day a report from Leonard D. White, former Republican minority member of the Civil Service Commission, approving TVA's handling of TVA's personnel problems.

¶ "MOST *of our old economic laws have been knocked into a cocked hat, along with our economic theories. We are exploring new country without maps.*"

—ALBEN W. BARKLEY
U. S. Senator from Kentucky.

A Canadian View of the St. Lawrence Waterway and Power Project

An adequate *quid pro quo* to Canada, more liberal than anything so far proposed, will be necessary to secure ratification by the Canadian Parliament of a treaty covering construction of the St. Lawrence waterway and power project. Such, at least, is the view of the president of the Engineering Institute of Canada, Dr. J. B. Challies of Montreal, who is also assistant general manager of the Shawinigan Water & Power Co.

Reviewing the history and present status of the proposed development of the important stream which marks the northern boundary of a substantial part of the state of New York, Dr. Challies suggests four points of the so-called Roosevelt treaty, recently submitted to Canada by Secretary of State Hull, which he deems objectionable to the Dominion. He states them as follows:

1. The Roosevelt treaty will in effect establish a new and permanent American servitude over the purely Canadian St. Lawrence canals.

2. The division of costs is unfair to Canada.

3. The division of maintenance and operation costs will be unduly burdensome to Canada.

4. Chicago diversion will be settled, but in favor of the United States.

So far as Canada is concerned, says Dr. Challies, the key to the economics of the waterway is the attitude of the government of the Province of Ontario toward the proportion of the cost of the dams and works in the St. Lawrence which power should bear. Until Ontario is ready to assume this burden, amounting to $67,202,500, Dr. Challies finds it difficult to see how Canada's share of the cost of the waterway can be financed.

Although the people of Ontario are represented as being more or less neutral, the government of the Province is openly opposed. The present situation is thus described:

> The present Ontario government having several times definitely refused to coöperate with the Dominion government on the basis of the Hoover treaty, an effort has been made by the U. S. government to evolve a new project of a treaty that would prompt the Province of Ontario to change its attitude. The American Secretary of State, the Hon. Cordell Hull, a few weeks ago, submitted new proposals which are much more attractive to Ontario than the Hoover treaty.
>
> For instance, a basis for the temporary export of power is incorporated that might increase the revenues of the Hydro by one million dollars per year. The moot question of the preservation of Niagara and additional diversions for power there is provided for—something the Hydro is very anxious to secure. Credit to Canada is also promised for any diversions into the Great Lakes system, as, for instance, the Ogoki and the Long Lac diversions from rivers presently flowing into Hudson bay—a concession of value only to Ontario.
>
> The President hoped that these new concessions would influence Premier Hepburn. But Mr. Hepburn promptly replied that there is no present market for the power, that Ontario power reserves are more than ample for many years to come, that Canada's railway problem must be solved first.

Likewise, the Province of Quebec, as a whole, is represented as being against the project. The reasons for the objections of the people of Quebec are summarized as follows:

> 1. They do not want to grant the U. S. additional sovereign rights on the river.
>
> 2. They consider that we cannot afford to spend the money necessary to deepen the St. Lawrence because they cannot see that we would gain any worthwhile benefits.
>
> 3. They know that there is no traffic either between the provinces or between the provinces and the mother country which requires any deeper navigation than the one we have at present.
>
> 4. They feel a 50-50 division of cost is not equitable, having in mind the undoubted preponderant benefit to the United States.
>
> 5. They think Canada should be rewarded for the 34 millions spent on the ship channel below Montreal, and for the 70 millions spent upon the upper St. Lawrence and the early Welland canals.

Nevertheless, every serious-minded Canadian, says Dr. Challies—"cer-

Great Lakes to Ocean Waterway

The Allocations of Capital Cost upon Which the Roosevelt Treaty Is Based

Section	*To be allotted to Canada*	*To be allotted to United States*
UPPER LAKE SECTION		
Channel Excavation		$54,900,000
Compensating Works		3,700,000
Lock at Sault Ste. Marie		6,500,000
WELLAND SHIP CANAL	$128,000,000	
INTERNATIONAL ST. LAWRENCE SECTION		
Thousand Island Section	772,000	760,000
International Rapids Section		
Works Common to Navigation and Power		
Property damages—Canadian	5,698,000	
Rehabilitation—Iroquois and Morrisburg	8,403,000	
Dams, channel excavation, etc.		94,001,000
Navigation Works—At Crysler Island	8,219,000	
—At Barnhart Island		25,969,000
Power Works—Substructures, etc.		58,591,000
—Superstructures, machinery, etc.		
United States power houses		36,930,500
Canadian power houses	36,930,500	
CANADIAN ST. LAWRENCE SECTION IN QUEBEC		
Lake St. Francis Section	1,330,000	
Soulanges Section	25,785,000	
Lachine Section	55,839,000	
Totals carried forward	270,976,500	281,351,500
Deductions from U. S. total due to savings achieved in Upper Lake Section		8,600,000
Totals carried forward	270,976,500	272,751,500
Deductions due to work completed in Thousand Island Section	772,000	760,000
TOTAL COST TO UNITED STATES		
Including all works for about 1,000,000 hp. in international reach of St. Lawrence		271,991,500
TOTAL COST TO CANADA		
Including all works for about 1,000,000 hp. in international reach of St. Lawrence	*270,204,500	

*This amount includes the following three items: Credit for Welland canal, $128,000,000; amount properly chargeable to Ontario as incidental to and necessary for power, $67,202,500; amount involved in power house machinery, $36,930,500. If Ontario assumes the latter two items, the net capital obligation of the Dominion government would be reduced to approximately $38,071,500.

tainly all who have enjoyed the priceless privilege of living next to a good neighbor"—will desire that the policy of free, frank, and friendly collaboration that for a hundred years has been so mutually advantageous regarding the connecting waters of the Great Lakes will be applied to the waters which join these lakes with the sea. "But further collaboration should be based upon fair terms."

Dr. Challies personally believes that this great enterprise is inevitable, and that it will be inaugurated and completed in his time. But not, he concludes, upon the basis for a treaty as presently proposed by President Roosevelt.

—G. E. D.

ADDRESS by Dr. J. B. Challies, president, The Engineering Institute of Canada, before the Empire Club, Winnipeg, October 28, 1938.

The March of Events

TVA Investigation

OPERATING results of the power program of the Tennessee Valley Authority in the fiscal year ended June 30, 1938, were a net profit of $75,700 before allocation of common expenses of the authority and, after such allocation, were a net loss of $310,171. These operating figures were contained in the TVA's preliminary report for the fiscal year, portions of which were read into the record last month of the Joint Congressional Committee Investigating the TVA by E. L. Koehler, comptroller of the authority.

No calculations for interest on the investment in the power projects were included in arriving at these figures, but deductions were made for depreciation and other charges and expenses. Direct comparison of these results with those for the preceding fiscal year was not possible because of changes in accounting methods. Operating revenue from power sales for the fiscal year ending June 30, 1938, was $2,305,876; income before depreciation and common expense, $1,123,916.

The depreciation charged directly to the power program in the 1938 fiscal year amounted to $1,048,216, while, in addition, the total of $385,871 in allocated common expenses included $211,653 for depreciation.

The operating revenues for 1938 were divided as follows: municipalities and coöperatives, $545,690; electric utilities, $196,767; industrial, $918,565; rural, $154,154; interdepartmental sales, $490,699.

For the entire period of TVA power program operation, the report showed a net income of $405,217 before allocation of common expense and a "net expense" of $748,664 after such allocation.

The preliminary TVA report also included a balance sheet covering the entire TVA investment, this representing the first time that such a balance sheet has been made public. Total resources of the authority were placed at $213,557,114.

Power production costs at the dams in the 1938 fiscal year, before allocation of common costs, were 0.83, 1.82, and 1.24 mills per kilowatt hour for Wilson, Norris, and Wheeler, respectively, of which nearly 70 per cent was for power facilities, the report stated. It contended, however, that because of unequal operation of the plants and a low ratio of power production to available and installed capacity, the average costs have little significance.

Leland Olds, executive secretary of the New York State Power Authority, told the congressional investigators on December 15th that private utilities could make good profits selling electricity at the low rates charged by the TVA. He disputed the contention that TVA competition would destroy investments in private power systems.

On the contrary, he said, the incentive of competition should stimulate business, yield greater earnings, and lead the privately owned enterprises on to "greater things."

The witness contended that regulation by state commissions had proven ineffective because the utilities had been able to "thwart or evade" their supervision by recourse to the courts. For that reason, he said, he favored regulation such as would result from government competition.

Questioned by Representative Wolverton, Republican of New Jersey, concerning the policy a community should follow in transferring from private to public distribution, Mr. Olds advocated full protection for investors in the private company. Representative Wolverton suggested that Congress or the states provide agencies to determine a fair price if the negotiators could not agree, but Mr. Olds said he thought final decision should rest with the municipalities themselves.

Mr. Olds, who also has served as a TVA consultant, said that he had been unable to find any "hidden subsidies" in TVA's power system. The authority's fixed charges, he said, compared favorably with those of private concerns and in some instances were higher.

Senator Donahey, chairman of the joint TVA committee, announced that it would recess indefinitely after December 21st, but that there would probably be a request for the next Congress to continue the committee investigation and appropriate additional funds. The $50,000 appropriated to the committee's work to date has been exhausted and another appropriation of a similar amount is being sought.

Files Protest with FPC

DECLARING its intention to extend its own pipe lines, when funds are available, to serve a number of communities in North Dakota and Minnesota with natural gas, the Montana-Dakota Utilities Company recently filed with the Federal Power Commission a petition for permission to intervene and a protest

against granting to the Kansas Pipe Line & Gas Company a certificate of public convenience and necessity to serve Fargo and Grand Forks, North Dakota, and Moorhead, East Grand Forks and Crookston, Minnesota. The application of the Kansas Company for such certificate to serve some 128 communities in five states was pending before the commission.

The commission also announced on December 13th its receipt of a supplemental answer from the Northern Natural Gas Company to an order directing Northern Natural to show cause why it should not extend its facilities to serve the territory sought to be served by Kansas Pipe Line & Gas Company; why it should not be made a party to proceedings before the commission on the Kansas Company's application; and why the commission should, as Northern Natural has requested, assume jurisdiction over the Kansas Company's application on the ground that the Kansas Company seeks to enter the market of Northern Natural. The supplementary answer contained a detailed description of Northern Natural's gas pipe-line system, which was only briefly mentioned in the company's original reply; a statement of the methods by which the capacity of the company's system could be increased; and reasons why the company is reluctant to increase its system capacity.

In its petition and protest, the Montana-Dakota Company stated that it now owns and operates a pipe-line system from the Baker gas field in southeastern Montana and southwestern North Dakota extending south to the Black Hills area in South Dakota, west to Miles City, Montana, north to Williston, North Dakota, and east to Bismarck, North Dakota. The company also has a pipe-line system extending from the Bowdoin gas field in Valley and Phillips counties, Montana, to Malta, Glasgow, and Fort Peck, Montana, to which the large reserves of the Bowdoin field are available and can be interconnected with the Baker-Bismarck system.

The company claimed that it has had in contemplation for some time the building of a connecting line from Fort Peck to Glendive, Montana, to make available additional markets for gas from the Bowdoin field and additional reserves for the Baker field pipe-line system.

Fight to Cut Dam Rates

THE Los Angeles Bureau of Power and Light and the metropolitan water district of southern California last month overcame most of the long-standing opposition of Colorado river basin states to lowering of Boulder dam power rates.

Representatives of seven western states conferred at Phoenix, Ariz., with consulting engineers on changes in the Boulder Dam Act to be submitted to Congress. Revision of power rates was one of the important questions considered.

Remaining to be settled was the question of how much surplus Boulder dam power revenue should be set aside annually for development of the remainder of the Colorado river basin. In the proposed legislation modifying the Boulder dam power contracts would be the following primary changes:

1. To lower the rate "firm power" from 1.63 mills per kilowatt hour to one mill.

2. To defer payment without interest of a flood control item of $25,000,000 to the end of the amortization or contract period, which has forty-seven years to go.

3. To lower the interest rate from 4 per cent to not more than 3½ per cent.

Also discussed was a plan to pay Arizona and Nevada $300,000 each annually in lieu of their rights under the Boulder Canyon Project Act to a share of surplus revenue, which in turn is in lieu of the taxing power which the state would have had if the project had been constructed under private enterprise.

Another proposal was to place $400,000 annually into a separate fund for development of the Colorado river basin. This money would be paid into the Federal treasury for appropriation later by Congress. This fund would be provided by power revenues.

States represented were California, Wyoming, Utah, Colorado, New Mexico, Nevada, and Arizona.

FPC Counsel Appointed

THE Federal Power Commission recently announced the appointment of David W. Robinson, Jr., of Columbia, S. C., as general counsel, effective January 1st.

Mr. Robinson, who was at the time of his appointment counsel in the power division of the Public Works Administration, served as counsel for Greenwood county, S. C., in the litigation brought by the Duke Power Company to prevent construction of the county's public power project.

SEC Amplifies Rule

A NEW rule under the Public Utility Holding Company Act, designated U-12F-1 which provides, with certain exceptions, that no registered holding company or subsidiary shall sell any of its public utility securities or utility assets to any company in the same holding company system or to any affiliate of a company in such system without having obtained permission from the Securities and Exchange Commission, was promulgated on December 9th, effective December 19th.

The rule supplements Rule U-12D-1, now in effect, which covers any sales, direct or indirect, of public utility assets or securities by registered holding companies. Because of this the commission explained that, where a sale by a registered holding company was subject to the provisions of both rules, a single application would be sufficient.

The new rule, as does Rule U-12D-1, contains a provision that, with certain conditions, it shall not apply to the sale of any utility assets to any person if a sale of securities or utility assets to a Federal or state government or any subdivision or instrumentality thereof is conditioned upon the consummation of the sale of such utility assets to such person. This makes it unnecessary in most instances for the commission to pass upon prices paid or other details of any such transactions.

Exemptions in the case of securities include also instances where the seller owns less than 5 per cent of the securities sold, where the security sold is issued by a public utility company which does not operate or have a subsidiary company which operates in the United States, and where the sale is to a company which owns, directly or indirectly, all the outstanding securities of the seller except the minimum amount of stock required to qualify directors.

Exemption also is granted where the consideration for the sale or all prior sales of securities of the same class in the same calendar year aggregates less than $50,000 and the security so sold is not of an associate company or is not a voting security or convertible into a voting security.

As to the sale of any utility asset, exemption is granted where the gross consideration or book value of such assets, whichever is the greater, is less than $50,000 or the selling company has, prior to April 15, 1938, filed an application for approval of such sale.

TVA Purchase Authorized

THE Federal Power Commission recently authorized the sale by Kentucky-Tennessee Light & Power Company of certain of its electric facilities to the Tennessee Valley Authority. In the same order the commission dismissed, for lack of jurisdiction, portions of the company's application relating to the sale of certain facilities to the city of Paris and the county of Weakly, Tenn., following a finding that the facilities involved are solely local distribution facilities. The commission's order stated that the authorization granted would expire unless acted upon within sixty days.

The FPC also issued a license to the city of Kaukauna, Wis., for a major hydroelectric power project on the Fox river within city corporate limits. The cost of the proposed construction, if the entire plant is fully developed, was estimated at approximately $408,997.

Alabama

Request Denied

CIRCUIT Judge Walter B. Jones declined last month to "review, correct, and squash" action of the State Public Works Board in approving issuance of $73,000 in bonds by the city of Fort Payne for construction of a municipal electric distribution system financed by a PWA loan and grant.

The Alabama Power Company, which contested Fort Payne's application before the board, filed suit on the contention that duplication of its existing system in Fort Payne would not be in the public interest.

The north Alabama municipality said it planned to retail Tennessee Valley Authority power at "yardstick" rates, and had offered to purchase the Alabama Company's system without its proposal being accepted or rejected and without a counteroffer.

California

Phone Rates Cut

REDUCTIONS in telephone bills to residents of 16 southland communities, at an annual saving of $52,300, were announced last month by the state railroad commission.

The savings to customers of the Associated Telephone Company were said to be the result of informal rate hearings conducted by the state commission during recent months and were being effected voluntarily by the company.

The municipalities to be benefited are North Long Beach, Arrowhead, Covina, Crestline, Etiwanda, Laguna Beach, Ontario, Westminster, Huntington Beach, Baldwin Park, Santa Monica, Malibu, West Los Angeles, Playa del Rey, Beverly Hills Canyon, Pomona, Redondo Beach, San Bernardino, Palos Verdes, Long Beach, and Lakewood village.

In some of these communities the rates would be lowered, while in others different concessions would be made.

All business extensions will be $1 a month, except message rate service extensions, which will be 75 cents a month. These rates will provide a uniform schedule of charges throughout the company's system and replace a variety of different charges. The new charges become effective at different dates.

Colorado

Power Project Approved

THE Public Works Administration at Washington early last month announced approval of a $211,405 grant to be applied toward financing a $469,790 water and power project proposed for Colorado Springs. Mayor George G. Birdsall said he was informed of the approval by Senator Ed C. Johnson.

The project, authorized by the city council more than four months ago, provides for the construction of two and one-fourth miles of 24-inch high pressure steel pipe line from the south slope of Pike's Peak to the city's hydro-electric plant in Manitou Springs, and for the purchase and installation of a 2,500-kilowatt generation unit in the hydro plant.

The improvements are designed to increase electrical output of the plant 50 per cent.

Power Plant Vote Upheld

DISTRICT Judge Harry Leddy on December 15th ruled that an election which decided that La Junta could establish a municipal power plant was legal and that the city officials would be justified in proceeding with plans to build the project.

The ruling rejected the case brought against the southeastern Colorado city by George Weybright, La Junta taxpayer, who contended that the election was not legal because a majority of qualified voters did not exercise their franchise last May 10th.

Florida

Rate Plan Rejected

MIAMIANS' current electric bills will be under the rates prescribed in Ordinance 1,066, and not at the lower rates submitted by the Florida Power & Light Company, for which the city commission recently voted a 90-day trial, "with certain reservations and conditions."

The new schedules were designed to save consumers in Miami some $350,000 a year, but the city commission on December 14th declined to withdraw conditions regarding rates for contract customers, a stipulation demanded by the power company after the city had voted the trial period.

Rate Consultant Thomas E. Grady told the commission the new rates, with allowances for continuation of long-term preferential contracts, "was just another deceptive proposal." He added it "was just bait to prevent the January 3rd public hearings," which were called to allow the power company to show cause why still further rate reductions may not be ordered.

The power company's request to be allowed to maintain its long-term contract rates was voted down in a special resolution presented by Utility Attorney S. S. Hoehl. J. D. Preston, head of the company rate department, said the company could not agree to these conditions, as set up in the commission's resolutions. As a result, the billing of current accounts, which could not be delayed past December 15th, would be on the basis of Ordinance 1,066, recently approved by the Federal courts.

Indiana

Orders Phone Rate Cut

TELEPHONE rates of the Indiana Bell Telephone Company in Indianapolis and 21 other cities on December 8th were ordered reduced by the state public service commission, effective January 1st.

The state commission abruptly ended the company's rate case on December 8th, issuing the rate order after it had held only one hearing in behalf of ratepayers. That one hearing was held on December 6th when the commission staff's appraisal and audit were reviewed only briefly. Commission officials estimated the total yearly saving to telephone users would be about $350,000. The case itself is said to have cost the company $196,608.

Commission spokesmen were said to have denied that the order resulted from a compromise agreement with company officials. It was estimated the new rates would give the company a return of a little less than 6 per cent.

Members of the commission said the reductions could not apply to all the company's exchanges because some were not yielding a fair return on their value, that some are not realizing their actual expense and that some are being operated at a loss.

The order set the value of the company's property, the intrastate part only, at $42,165,-198 as of June 30th. Commission engineers, however, in their appraisal, had set the figure at $41,138,956 which was about $4,000,000 un-

der what the company had set its value. Those figures included depreciation.

The telephone company said the reduction was more than was justified, but in the interest of settling the controversy would accept the commission's order in the hope that with improved business conditions it would be able to earn somewhere near a fair return.

Kentucky

City Loses Appeal

THE court of appeals on December 6th declared a city cannot construct a municipal light, heat, and power plant without first getting from the state public service commission a certificate of public convenience and necessity.

The opinion upheld a grant by the Lewis Circuit Court to William B. Plummer of an injunction restraining Vanceburg from constructing a power plant or issuing bonds therefor, although a $148,000 bond issue had been favored by a vote of 175 to 141 on November 2, 1937.

The court said a certificate of convenience and necessity was required "to prevent the unnecessary duplication of facilities for utility service and to protect the consuming public from inadequate service and higher rates which frequently result from such duplication." Judge William H. Rees, who wrote the opinion, added that after obtaining a certificate and constructing a plant, a city can operate its powerhouse and fix its rates "free from any supervision or regulation by the state public service commission."

Bond Sale Void

A BOND issue of $220,000 by the city of Corbin to enlarge and improve its electric light and water plant was held valid on December 13th by the court of appeals, but the noncompetitive private sale of the issue was declared void.

The opinion, delivered on rehearing, modified an earlier ruling that the bond issue, to be supplemented by a $180,000 Federal grant, was void because no referendum was held. The more recent decision held a referendum was not necessary. The opinion declared:

"The failure to give opportunity to others to bid upon the proposed bonds, and the making of a private sale before the bonds had been authorized is inimical to public welfare, contrary to public policy, and void."

It pointed out the city undertook by ordinance to ratify an agreement, made before the bonds came into existence, for sale of the issue.

Mississippi

Electric Rates Cut

TUPELO, the nation's first city to install TVA electric power, recently announced a cut in rates below the TVA standard. Mayor J. P. Nanney said the reductions would serve as an answer to former TVA Chairman Arthur E. Morgan's contention Tupelo was losing money.

The reduction, effective February 1st, was about 5 per cent on industrial power and about 11½ per cent on commercial. No cut in residential rates was announced. The new commercial rates will range downward from 2 cents a kilowatt hour for 350 kilowatt hours to 8 mills apiece for all over 2,000 kilowatt hours a month. Industrial charges will range from 8 mills apiece for 15,000 kilowatt hours to 2½ mills apiece for 500,000.

The mayor said the new schedule was worked out by TVA experts. Tupelo's rates had been cut once before.

Missouri

Gas Hearing Put Over

INVESTIGATION of the feasibility of furnishing straight natural gas to all gas users in St. Louis, instead of the mixed artificial and natural now sold by the Laclede Gas Light Company, will be resumed at Jefferson City by the state public service commission on January 25th. At that time the commission expects a new proposal to be submitted as a result of renewed negotiations between Laclede and the Mississippi River Fuel Corporation for the necessary natural gas supply.

The negotiations, declared by Mississippi Fuel representatives to have reached an impasse last month after the Laclede Company

rejected what the pipe-line concern insisted was its best price offer, were subsequently reopened following disclosure that the pipe-line company had invited Laclede to make it a new price proposal and the latter company had agreed to submit one.

Hearings were adjourned on December 9th by the state commission to give the two companies another opportunity to seek an agreement that would bring straight natural gas to St. Louis, and to enable commission engineers to check some of the operating data already submitted. The inquiry had been in progress at intervals since March, 1935.

Nebraska

Injunction Granted

FOLLOWING a hearing in Federal court on December 9th, Judge Munger granted a temporary injunction preventing the city of York from proceeding with construction of a municipal power plant. The order, which was signed at request of the Iowa-Nebraska Light & Power Company, would be effective until the power company's suit for a permanent injunction can be heard.

York officials, who had called for bids on power plant equipment estimated at $475,000 to be received December 9th, notified prospective bidders not to submit estimates "at this time."

The Iowa-Nebraska Company asserted construction of the proposed York power system was illegal. The company charged in its complaint that York officials failed to follow the provisional statute and violated the requirement that the bonds be sold at not less than par or face value. It also contended that the city's procedure had prevented "open, free, and competitive bidding."

In its petition for the injunction, the power company declared its investment at York totaled more than $500,000. The city previously had filed suit to compel Iowa-Nebraska to move its properties from the streets of York.

Seeks FPC Approval

NEBRASKA'S second largest electric utility, the Iowa-Nebraska Light & Power Company, on December 5th asked the Federal Power Commission to approve the sale of its power properties in Nebraska to two public power districts at a price of $20,195,991.

L. R. King, of Lincoln, president and general manager of the company, confirmed details of the proposed transaction, but said he had no comment to make as to when the deal would be consummated.

Under terms of the contract filed with the application, the Loup River Power District would pay $2,825,879 for the company's electric properties north of the Platte river.

The Central Nebraska Public Power and Irrigation District would buy the company's electric properties south of the Platte river for $17,370,112. The contract covered "substantially all its system for the production, transmission, and distribution and sale of electrical energy and the business incidental thereto."

Properties to be sold included two steam generating stations at Lincoln and one at Norfolk, having total capacity of 40,000 kilowatts; 1,344 miles of transmission lines; substations having a capacity of 50,000 kilovolt-amperes; and distribution systems serving 43,000 customers in 108 eastern Nebraska communities.

The company excluded from the sale its gas properties in Nebraska, its 66,000-volt transmission line crossing the Missouri river at Plattsmouth, and its properties in Iowa. The price, said the petition, was recommended by J. D. Ross, appraiser of the districts, after an audit of the company's books.

The company, although asking for approval of the sale, denied jurisdiction of the Federal Power Commission. The purchase price, to be paid in cash, was "based principally on the earning power of the facilities."

Brands Service Unsatisfactory

THE Ord city council on December 9th passed a resolution branding as unsatisfactory its electrical service from the North Loup Public Power and Irrigation District. The district is one of the Public Works Administration hydroelectric projects.

Earlier, the council adopted another resolution notifying the district that the city had taken steps to guard its forfeiture rights should it be deemed necessary to go into court for abrogation of its contract.

New Jersey

Makes Tax Payments

THE Public Service Electric & Gas Company and Public Service Coördinated Transport were reported last month to be sending checks to municipalities in payment of franchise and gross receipts taxes due, but which had been held up pending litigation.

Passage of bills by the state legislature on December 12th cleared the way for these payments. The recent legislation was passed for those utility corporations which are willing and desirous of paying such taxes or a part thereof prior to the completion of the pending litigation, but could not safely do so under the Pascoe Acts.

The taxes and their apportionment to each municipality were certified by the state tax department under the Pascoe laws of this year but payment of the moneys was prevented when the constitutionality of the laws was attacked by several municipalities. The laws gave the state tax commissioner rather than the local assessors the power to apportion the share of taxes to which each municipality is entitled. A decision by the supreme court, to which an appeal was taken by certain municipalities, was being awaited.

There is a provision in the Pascoe laws that taxes shall not be paid by utility companies if any court action is taken to contest the laws, and that such taxes will not be payable until thirty days after final decision by the courts.

The emergency legislation passed December 12th, however, makes it possible to begin payments on account and will enable municipalities to reappropriate in their 1939 budgets the amount of the 1938 tax which was set up in the 1938 budget but which might not be collected that year.

New York

Rate Reduction Blocked

CHAIRMAN Milo R. Maltbie, of the state public service commission, recently revealed that a $500,000 reduction in electric rates for consumers of the Queens Borough Gas & Electric Company had been blocked by a refusal of a majority of the state commission members to vote on an order for the reduction.

Chairman Maltbie announced that he intended "to present this matter at every session of the commission until it is finally disposed of." The impasse was said to be the first in the nine years of the commission under its present set-up. Mr. Maltbie said that he and Commissioner Burritt had approved the order at a commission meeting.

Recently the state commission, composed of five members including the chairman, ordered the Queens Company to refund more than $500,000 to its consumers, representing a reduction ordered in 1933 for one year. The company contested the order in court, but the state commission was sustained and the rate reduction was ordered with interest.

Chairman Maltbie said that a report based on a study of property values, revenues, and expenses of the company, approved by the commission last October, showed the company "had been earning far in excess of a reasonable return upon the value of its property in the electric department, but that the gas department had not been earning the return to which it was entitled."

Commission Issues Orders

THE state public service commission last month ordered all New York state gas and electric corporations to eliminate from their rate schedules all provisions designed to relieve the utilities from liabilities resulting from discontinuance of service, willful misconduct of employees, negligence, or damages resulting from gross negligence.

While the courts have held that such provisions are ineffective and void, the commission expressed the opinion that inclusion of such clauses in rate schedules has the same effect of misleading consumers regarding their rights of action.

The state commission also has ordered all street railroad, gas, electric, steam, waterworks, omnibus, telephone, and telegraph corporations under its jurisdiction in the state to file with the commission on or before February 1, 1939, a copy of every cost-plus contract let during the years 1936, 1937, and 1938, and a copy of every such contract that is now in effect if let prior to 1936, for the construction, improvement, or extension of its plant, works, or system exceeding in amount $25,000 in any calendar year.

Each of the corporations also is required to file with the state commission a copy of every proposed cost-plus contract for the construction, improvement, or extension of its plant, works, or system exceeding in amount $25,000 per year. (See ruling, page 58.)

Ohio

Fights Plant Expansion

IN an effort to block the expansion program for the Cleveland municipal light plant which operates in competition with the Cleveland Illuminating Company, a taxpayer's suit was filed recently in common pleas court by Tolles, Hogsett & Ginn, attorneys representing

George H. Charles, a taxpayer. The company is a subsidiary of the North American Company.

The expansion program would provide for increasing by 75 per cent capacity through expenditure of $5,447,000, of which $3,000,000 would be provided by the city through sale of mortgage revenue bonds. The balance would come from PWA.

A referendum election was called by the city for December 21st.

The taxpayer's suit contended that the ordinance authorizing issue of bonds was improperly passed by the city council and sought injunction to prevent sale of bonds. The suit contended that the date of election, if held, should be February 14th. A petition with more than 5,000 signatures has been filed with the city clerk requesting this date for the election, which under provisions of the city charter, it was contended, made it necessary to change the date.

Receives PWA Allotment

PUBLIC Works Administrator Ickes announced recently that he had authorized the city of Middletown to make use of PWA funds in constructing a public power distributing system. Mr. Ickes' action followed refusal by the Cincinnati Gas & Electric Company to sell its distribution system to the city for $815,000.

The PWA has allotted to the city a sum of $769,000 to help finance the project, which is expected to cost $1,710,500. The construction price also contemplates erection of a power-generating plant, it was said.

Pennsylvania

To Hear Rate Case

THE U. S. Supreme Court on December 19th agreed to hear important cases involving basic rules of utility valuation for rate-making purposes.

The court accepted the appeal of the Pennsylvania Public Utility Commission from a lower court decision holding the temporary rate provision of the state Public Utility Act invalid. The case was expected to involve Supreme Court principles laid down in 1898 providing that the original cost of a utility and the cost of reproducing it new must be considered in fixing utility rates.

The cases may afford a clear-cut test of whether the court still believes its 1898 doctrine should be continued, attorneys declared.

The court recessed until January 3rd.

FPC Dismisses Charges

THE Federal Power Commission on December 7th dismissed as "unjustified" a complaint by State Senator H. Jerome Jaspan, of Philadelphia, that power rates of the Philadelphia Electric Company in sales to a Delaware affiliate discriminated against the city's residential consumers.

Jaspan charged the Philadelphia Company with supplying electric service to the Delaware Power & Light Company, an affiliate, for 4.9 mills per kilowatt hour, though cost of production was 1.5 cents per kilowatt hour, and the rates to Philadelphia consumers average 5 cents.

He charged the rates were unduly burdensome to Philadelphia consumers and were, in effect, confiscatory of the property of the Philadelphia utility.

In an opinion handed down by Acting Chairman Clyde L. Seavey, and Commissioners Claude Draper and John W. Scott, the FPC held that although complete information had not been filed a preliminary investigation of the Philadelphia Electric Company's rates revealed no basis for further inquiry.

Injunction Continued

THE Dauphin county court at Harrisburg last month continued until January 14th the injunction it originally issued last October under which the state utility commission is restrained from enforcing a reduction in rates of the Philadelphia Gas Works Company, UGI subsidiary.

Resumption of hearings on the pending 10-year lease of the Philadelphia gas works by the UGI subsidiary, before the state commission, scheduled for December 16th, has been postponed until January 12th.

Philadelphia Gas Works Company officials refused to make any comment on the recent offer of A. Webster Dougherty, investment banker, representing a syndicate, to purchase the municipally owned gas works for $65,000,000.

John B. Kelly, Democratic city chairman, last month again suggested to the city council that sale of the Philadelphia gas works would solve the city's financial worries. He said:

"Disposal of the gas works at a price that would wipe out the deficit, clean up high cost mandamuses and permit actual reduction of taxes or the accomplishment of needed capital improvements, or both, would be a common sense solution. It would put Philadelphia on its feet and enable the city government to start from scratch with an honest budget for the first time in years.

"Why not sell now at a fair price—pay up the merchants and business houses that are waiting for money the city owes them and

save Philadelphia from either higher taxation or bankruptcy? If a bidder should not appear the Philadelphia authority could take the plant over and accomplish the same result by selling bonds and turning the money over to the city. I think the case in favor of such a proposal is 'open and shut.' Nobody wants to pay more taxes."

Agrees to Rate Cut

THE Pennsylvania Power & Light Company, supplying Harrisburg, most near-by communities, and many municipalities in the eastern part of the state, was ordered early last month by the state public utility commission to file on or before December 19th a new tariff embodying rates designed to save consumers approximately $2,300,000 a year.

The company was directed to provide one residential schedule instead of the 14 in effect throughout the area served, two small commercial schedules instead of 19, three large commercial schedules instead of 42, and one rate for resale consumers instead of three. The company's minimum rate of $1 a month was reduced to 75 cents.

The new residential rates, effective on all bills rendered on or before January 1st, are 75 cents for the first 7 kilowatt hours, 5½ cents for the next 60, 3 cents for the next 63, 2 cents for the next 120, and 1½ cents for all in excess.

When bills are paid within fifteen days from the date thereof the net residential rate applies. When bills are not so paid the gross rate will apply, which gross rate is the net rate plus 5 per cent of the then unpaid balance of the monthly bill.

South Carolina

PWA Funds Made Available

THE Public Works Administration on December 8th made available for immediate construction use $19,800,000 more to the Santee-Cooper project, bringing the total amount of money made available for the project to approximately $30,000,000. Ultimately it is to get $37,500,000. Announcement of the allotment of the $19,800,000 was made in Charleston by Burnet R. Maybank, chairman of the Santee-Cooper Authority.

The money which the PWA has earmarked for Santee-Cooper is $37,500,000. The $19,800,000 is not to be mistaken for an additional appropriation for the project, it was said. It is a portion of the $37,500,000. Previously, approximately $10,000,000 had been made available to Santee-Cooper.

Maybank said the new moneys made available would carry construction work through 1939 and into 1940. Santee-Cooper will have a production capacity of more than 700,000,000 kilowatt hours of electric energy.

Recess Ordered

A RECESS until January 3rd was granted the South Carolina Electric & Gas Company on December 15th in the hearing of the case of the state public service commission against the company on the question of electric rates.

The state commission on November 9th issued an order prescribing that the company put into effect electric rate reductions aggregating a saving of $510,000 for customers of the company.

When the case came up on December 15th for hearing before the state commission, the company petitioned for a postponement through its attorney. After a hearing the commission granted the postponement. The company's attorney contended that not enough time had been allotted for a reply.

Tennessee

Company under Order

THE Tennessee Electric Power Company was under order on December 15th to appear January 24th before the state utilities commission to show cause why its rates should not be reduced.

The state commission set the date for the hearing after announcing several weeks previous that it had under preparation an order inquiring why the rates should not be cut to the level of TVA schedules.

Coinciding with the announcement was the filing of two petitions by the city of Nashville, one requesting a hearing on power rate reductions in the Nashville area, the second asking a decrease in transportation fares of 5 cents. Commissioner Leon Jourolmon stated:

"We are going after TVA rates. A $2,000,000 reduction in costs to the consumers in the Tennessee Electric Power system would be comparable to establishing rates at about TVA levels."

Seek Legislative Remedy

A THREATENED loss of tax revenue through a proposed sale of the West Tennessee

Power & Light Company's electrical properties to 22 municipalities in the area of Jackson, led the Madison county court last month to seek legislative remedy.

At a called meeting, the court authorized County Judge August Wilde to appoint three magistrates as a committee to confer with county legislators on the problem, which he said was not "purely a local matter."

Pushes Gas Rate Fight

MEMPHIS may carry its fight for reduced gas rates to the state legislature. Such an opinion was expressed recently following a new attack by E. H. Crump on the Memphis Power & Light Company, in which the Shelby political leader asserted "that before long we will limit and restrict their gas monopoly."

The city early last month speeded construction work on its duplicating electric system after the utility had rejected, in effect, an offer of $17,385,000 for its gas and electric properties. The power company at the same time announced it had cut its electric rates to the city level, which is TVA basic rates plus 15 per cent.

Crump attacked the rate cut as a "trick to get the people on their side," adding that "only permanent cheap electric lights and cheap gas will satisfy." He said to insure that, the city must have its own gas and electric systems.

Texas

Qualify for LCRA Power

EIGHTEEN of the 23 cities that have voted to acquire municipal electrical distribution systems to make use of power from the Lower Colorado River Authority qualified for the beginning of construction under the deadline set by the PWA, Max Starcke, operations manager of LCRA, announced recently.

In addition to these cities Smithville, which will use LCRA power, already has purchased the privately owned system serving the town.

Cities qualifying are Llano, Kyle, Lampasas, Fredericksburg, Bastrop, Burnet, Marble Falls, Luling, Lockhart, Waelder, Cuero, San Marcos, Blanco, Manor, Schulenburg, Elgin, Moulton, and Somerville.

It is expected that the cities will begin the use of power from LCRA by the middle of 1939.

West Virginia

Seeks Control of Securities

REGULATION by the state public service commission of the sale of utility stock was disclosed recently as one of the measures which will get before the legislature in January.

The Federal government and 31 states, through commissions, have direct control over issuance and sale of all public utility securities, a state commission spokesman said, but in West Virginia the utility body has no such jurisdiction.

The state's "blue sky" securities act, administered by the auditor, covers sale of new utility issues, except railroads, but there are some exemptions.

The proposed bill probably would ask for registration of all utility securities for purposes of checking. The spokesman said:

"In order to complete its authority and jurisdiction over public utilities and thereby make it more effective in the public interest, it may be that the commission should have jurisdiction over the issuance and sale of securities."

Wisconsin

State Tax Study

THE Wisconsin Development Authority is making a study of taxation in the state, with special reference to rural electric coöperatives, John A. Becker, general manager, announced last month. At the request of the Federal Rural Electrification Administration, special emphasis would be given to electric coöperatives, he said.

In the completed study an analysis and comparison of municipal and utility taxes will be included, with the objective of determining the relative factor of taxation in all types of electric agencies in the state, the WDA head announced. It was expected that Wisconsin's electrical tax data would be compared with that of other states, Becker said.

He pointed out that while this study should be of general interest, it would be of particular value to electric coöperatives, since they were first subject to taxation in 1937.

The Latest Utility Rulings

Restoration Charge Not Valid under Law Prohibiting Service Charge

THE New York Court of Appeals sustained the right of a customer to sue for an injunction against the collection of a charge for turning on gas after temporary discontinuance. The court upheld a decision of the appellate division of the supreme court, reported in 23 P.U.R.(N.S.) 393.

The appellate division held that the state commission could not determine questions of law and that it was without power to determine whether a service restoration charge was forbidden by a statute prohibiting a service charge. The court sustained the right to bring the action in court rather than take the matter to the commission.

The higher court held that the customer could not bring a representative action for an accounting, but it did hold that the service charge was illegal and that the consumer could seek a declaratory judgment for the benefit of consumers subject to such a service charge in the future. Judge Hubbs said in part:

> If, in the instant case, the defendant had discovered, when it attempted to turn off the gas at the request of the plaintiff, that locking of the meter would not prevent use of gas and that removal of the meter was necessary, clearly a charge for reinstalling the meter when turning on the gas would fall within the prohibition against a charge "for the installation of apparatus." The cost to the company would undoubtedly be greater than if it merely turned off the gas, yet if the construction contended for by the appellant were to be placed upon the statutes it would follow that whether a charge may be made depends upon whether the company chooses to turn off the meter or to remove it and reinstall it.

Kovarsky v. Brooklyn Union Gas Co.

Relinquishment of Voting Rights of Stockholder to Escape Holding Company Status

ORDINARILY the California commission does not favor the issue of nonvoting preferred stock, but because of the special circumstances giving rise to an agreement of merger and the issue of preferred stocks thereunder the commission recently permitted the issue of such stock subject to stated conditions.

The merger was one step in a program looking toward the elimination of a holding company system and the dissolution of a corporation to enable the parties to comply with the provisions of the Public Utility Holding Company Act of 1935. The Niagara Share Corporation of Maryland, which was to acquire all the preferred shares, in order to avoid being classed as a holding company, did not desire the articles of incorporation of the surviving corporation to grant voting powers to the preferred shares except in the event of default.

It was proposed that if the preferred shares were no longer held by this corporation, or a successor or successors, but were held by and for the benefit of three or more persons, the surviving corporation should forthwith amend its articles of incorporation so as to provide that voting rights might be exercised forthwith and immediately upon the happening of a default in the payment of dividends (instead of waiting for default in four quarterly dividend payments) and without the necessity of calling or holding any special meeting of the holders of such

shares. The state commission said:

> We are of the opinion that if and when Niagara Share Corporation of Maryland disposes, in any manner whatsoever, of any or all of the preferred stocks of the surviving corporation, its articles of incorporation should be amended in the manner just indicated. We are further of the opinion that in the event the surviving corporation defaults in the payment of dividends on both or either class of preferred stocks, after part or all of such stocks have been transferred by the Niagara Share Corporation of Maryland, the said articles of incorporation should be amended so as to grant the owners of the preferred stocks five votes for each share of preferred stock owned.
>
> If the surviving corporation is unable to pay dividends on its preferred stocks, we feel that the owners of such stocks should have the same voting privilege in relation to their investment as is extended to owners of common stock.

Re Southern Oregon Gas Corp. et al. (Decision No. 31363, Application No. 22230).

Motor Carrier Competition When Business Would Support Only One Carrier

An application by an authorized motor carrier for an extension of authority so as to permit the transportation of newspapers over a route covered by a certificate issued to another carrier was denied by the Connecticut commission. Both carriers were transporting for the same publisher, and it was suggested that if authority were granted, these carriers would be placed in competition for the business of the publisher. The question was whether it would promote public convenience and necessity to create a basis of rate competition between the carriers.

This case, it was said, went to the very fundamentals of motor truck regulation. In the development of motor carrier service, competition had been directed in large part to rates, and though the resulting low rates might seem an advantage to shippers it was said to be so in appearance only. The commission continued:

> Earnings under such conditions were insufficient to maintain equipment or to provide dependable service. The confusion was beneficial neither to the shipper nor the general public. This was one of the important reasons for placing the industry under regulation.
>
> The idea of monopoly is distasteful. Yet no method of regulating common carriers has been devised which does not require some limitation in the number of operators, to wit: at least a partial monopolization. The reasons for this are frequently misunderstood. The law does not limit the number for the benefit of authorized carriers. The purpose is to protect the public against the unavoidable evils of unrestricted competition.

It was said to be doubtful if a division of the business between the two carriers would produce a return to either sufficient to support a service which would satisfy the shipper. If existing rates were found to be high, the statute prescribed a remedy and competition would not be a remedy. *Re Mashkin Freight Lines, Inc. (Certificate No. C-534).*

Schedules Must Not Contain Liability Clause Excusing Negligence

The New York commission, after an investigation of liability clauses in rate schedules and application forms of gas and electric corporations, ordered the elimination of clauses which attempted to excuse the utility from liability resulting from negligence. These clauses fall into three groups: First, with respect to liability for failure of continued service; second, with respect to liability for structures, equipment, wires, pipes, and appliances owned, leased, installed, or maintained by the customer; and third, with respect to liabilities resulting from

the supply or use of electricity or gas, or from operation of companies' structures, and equipment upon consumer's premises. (See also page 53 of this issue.)

Adverting to the rule established by the courts that a utility company may not relieve itself from liability for damages caused by gross negligence or willful misconduct of the utility, its officers, agents, or servants, the commission expressed the view that no company should be permitted to have such a clause included in its schedule, as the effect of this would be to mislead the consumers as to their rights of action. The commission did not object, however, to the inclusion of a provision that the company would endeavor to furnish a regular and uninterrupted supply of service and that it would not be liable for interruptions or failures from causes beyond its control or through ordinary negligence of employees, servants, or agents.

The commission saw no objection to the inclusion of a provision specifically setting forth that the company by inspection or nonrejection did not give any warranty, expressed or implied, as to the adequacy, safety, or other characteristics of any structure, equipment, wires, pipes, appliances, or devices owned, installed, or maintained by the customer or leased by the customer from third parties. The companies were required, however, to cancel any clause in their schedules which sought to limit the liability of the company for damages resulting from its own negligence in connection with such property.

The companies were required to cancel any clause seeking to limit liability for any damages resulting from the negligence of the company in connection with the supply or use of electricity or gas or from the presence or operation of the company's structures, equipment, wires, pipes, appliances, or devices on the customer's premises. The commission did not, however, object to a schedule providing that the company would not be liable for such damage except damage resulting from the negligence of the company. *Re Liability Clauses in Rate Schedules and Application Forms (Case No. 9439).*

Charges for Hotel Telephone Service

An investigation by the New York commission of complaints against so-called "service charges" in addition to established telephone rates made by hotels for calls placed from guest rooms or other telephones connected to the hotel private branch exchange switchboard resulted in directions for a revision of tariffs. The commission reached the following conclusions:

Hotels should be prohibited by appropriate tariff regulation from charging for overtime on local calls except on calls for which the hotel is charged for overtime by the telephone company.

An additional charge of 5 cents for each toll message for which the telephone company receives up to and including 50 cents and a charge of 10 cents for each toll message charged in excess of 50 cents would be sufficient to cover all the costs incurred by the hotel company in furnishing its part of the service.

The telephone company should eliminate from its tariffs the special hotel private branch exchange schedule and extend to all districts the application of its private branch exchange service schedule now applicable only in districts where business individual line message rates are quoted.

Hotels which receive a commission have an advantage as compared with hotels which do not receive a commission, and, conversely, hotels which do not receive a commission are subjected to a disadvantage. Such advantage on the one hand and disadvantage on the other are unjust and unreasonable and should be eliminated.

Services rendered at lobby public telephones are practically the same whether

they are operated by the hotel or by the telephone company, and the same rates should apply in either case.

The hotels were criticized for endeavoring by their system of charges to make their guests pay the cost (as allocated by the hotels) of handling all incoming telephone service through the charges they make on all toll outgoing service. It was said that the question presented was whether a schedule of rates is just and reasonable which in one class of telephone subscribers levies charges upon outgoing messages in order to pay the cost of caring for incoming messages as well. The commission said:

> This principle is entirely contrary to all of the other schedules of telephone rates. When a subscriber pays for individual line service, whether it be residential or business and whether it be upon the flat rate or message rate basis, he pays for the privilege of making outgoing calls. He is not charged for any incoming calls. He may have no incoming calls or he may have hundreds of incoming calls in a month. So far as incoming calls are concerned, his rate remains unchanged and he pays no more if he has a hundred incoming calls in a month than if he had one incoming call.

Re New York Telephone Co. (Case No. 9164).

Charge for Retractile Cord

THE Michigan commission authorized a telephone company to make effective a charge of 50 cents for each retractile cord installed at the time of a visit on the same premises necessitated by other work covered by a service order, and for other installations a charge of $1 for the first retractile cord and 50 cents for each additional cord installed at the same time on one premises.

The retractile cord, it was said, consists of textile insulated tinsel conductors covered with an outer cotton braid having stretched rubber bands held in place by the braid. The strands cause the cord to form a coil of approximately three-quarters of an inch in diameter, and allow it to extend with slight tension to a useful length. *Re Michigan Bell Telephone Co. (T-252-38.17).*

Additional Cost of Hand-set Telephone Instruments Found Insufficient to Justify Extra Charge

ELIMINATION of an additional charge of 8 cents per month for hand-set telephone instruments was ordered by the Wisconsin commission upon its finding that the current annual added cost of hand-set service was 18½ cents for each instrument. The commission said that this was so small that it did not warrant an added monthly charge, especially since the collection of such a charge involved some additional costs for income tax, collection expense, license payments, and revenue taxes. The commission declared:

> It is not reasonable to insist upon a differential in rate for every minute variation in cost; and ordinarily no additional charge should be imposed merely because of a difference in the type of instruments used, especially when the instrument for which no surcharge is made and upon which the difference in costs is determined has not been manufactured since 1930.

The commission, in determining the additional cost of hand-set instrument service, ruled that past expenses attributed to the use of hand sets and future expenses attributed to the hand sets purchased up to December 31, 1937, and for the use of which extra charges had been paid by the subscribers, might, with some equity, be attributed to the subscribers who had used hand sets in the past and were now using such instruments. The commission held further, however, that premature retirement losses due to future transfers to hand-set use were not

properly attributable to such subscribers, but that such losses, if they should exist, should equitably be paid by the subscribers causing such losses or covered by the general rate schedule.

Depreciation expense of hand-set instruments was allowed at the rate of 3.4 per cent, based upon an 18-year life, 5 per cent negative salvage, and a 6 per cent sinking fund. The use of straight-line depreciation was said to be improper unless a deduction were made from the rate base for accrued depreciation.

No information as to accrued depreciation existing in the hand sets was available in this case. *Re Wisconsin Telephone Co. (2-U-35, 2-U-280).*

Grounds for Authorizing Abandonment of Motor Carrier Service

AUTHORITY to discontinue passenger transportation by motor vehicles between designated points was granted by the Montana commission on the ground that from the commission's investigation of the facts the applicant's service was being operated at a loss and the service was no longer necessary because of existing service between the cities named. The commission, however, criticized the applicant for failing itself to present evidence as to the lack of necessity for the service.

Under ordinary circumstances, said the commission, the loss of revenue is in itself no justification for a motor carrier to abandon a portion of its service. When a carrier is granted authority to operate, it is charged with rendering service to the public, and having assumed this obligation, it cannot lightly disregard it and eliminate itself from the transportation business merely on the pretext that it is losing money by its operations. Nevertheless the commission from its own independent investigation determined that the service was no longer necessary.

Evidence was introduced to show that a chamber of commerce and a traffic bureau had concluded that the service was no longer necessary, but the commission said:

> While such evidence may be entitled to some weight, nevertheless it must always be borne in mind that evidence in such a case as we have here in order to support an application for abandonment should not be confined to resolutions by civic bodies or the testimony of witnesses who do not patronize the service but rather evidence by patrons of the applicant or competent evidence to show that applicant's service is no longer necessary to serve public convenience and necessity.

No appearances were made at the hearing in opposition to abandonment, but the commission said that even so it should proceed to determine whether the application was justified. With respect to petitions sent to the board protesting the abandonment, it was said that such petitions are not in themselves evidence and should not be considered, since to so consider them is to deprive the applicant of its right of cross-examination. *Re Northern Pacific Transport Co. (Docket No. 2936, Report and Order No. 1723).*

Issuance of Federal Power Commission License To Power and Irrigation District Upheld

IN a decision handed down December 12th, Federal Judge Donohoe, of the United States District Court of Nebraska, upheld the issuance by the FPC of a license to the Central Nebraska Public Power and Irrigation District for the Kingsley or Tri-County project now under construction on the North Platte

river near Keystone, and upheld the jurisdiction of his court to try condemnation cases brought by the licensee to acquire lands needed for the project.

The condemnation suits brought by the district were started after the Federal Power Commission made a finding that the project was justified and desirable in the public interest for the purpose of improving navigation on the Missouri river, a finding which is required under § 21 of the Federal Power Act before eminent domain proceedings may be brought in a district court of the United States. The court held that the Federal Power Commission acted entirely within its jurisdiction in issuing the license and that the license was not open to collateral attack by the landowners who were objecting to the jurisdiction of the commission and of the court.

Also, the court was of the opinion that the evidence clearly established that the finding of the FPC was based on substantial evidence as shown by the facts and that even in a direct appeal it would not be disturbed. *Re Central Nebraska Public Power and Irrigation District.*

Other Important Rulings

THE Michigan commission approved the purchase of a telephone exchange by a company which had obtained possession of the property by means of unauthorized transfers, but at the suggestion of the commission for the betterment of service, and which had operated the property in such manner as to give satisfactory and reasonable telephone service. The company had neglected to obtain commission approval but had shown its good faith by seeking belated approval of the purchase and it had also improved the property and service. *Re Chesaning Home Teleph. Co. (T-246-38.1).*

The Arizona commission held that it could not grant a permit for motor carrier operations, although a real necessity from the standpoint of the public welfare existed, until the existing operators had been given an opportunity to improve their service to the extent that they might furnish the required transportation. *Re Pexton (Docket No. 7563-S-5049, Decision No. 10001).*

The Federal Communications Commission, in denying a joint application for approval of the assignment of a radio station license, declared that it would apply the principle that past losses in operation may not be capitalized in the valuation of property for rate-making purposes, although a person engaged in radio broadcasting is not deemed to be a common carrier, since such a principle is in accordance with sound public policy. *Re Travelers Broadcasting Service Corp. (Docket No. 4692).*

The Pennsylvania commission approved a proposed plan of reorganization following its disapproval by earlier orders, where the company made modifications in its plan to meet the commission's objections. The plan did not entirely meet all the objections raised by the commission, but, in view of the urgent need for reorganization, approval was granted. *Re Philadelphia Rapid Transit Co. (Application Docket No. 33559).*

The Pennsylvania commission disapproved a plan for reorganization of a street railway corporation involving a consolidation of utilities, where the principal asset of the corporation was its interest in an electric utility company involved in a rate proceeding, on the ground that the future earning capacity of the corporation and the extent of its assets could not be determined at the time. *Re York Railways Co. (Application Docket No. 54845).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

Titles and Index

TITLES

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PUBLIC UTILITIES REPORTS

UNITED STATES DISTRICT COURT, N. D. CALIFORNIA

Pacific Gas & Electric Company

v.

Railroad Commission of California

(— F. Supp. —)

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UNITED STATES DISTRICT COURT

ACTION to enjoin the operation of natural gas rates fixed by the California Commission; after abandonment of prayer for permanent injunction, rates sustained for specified years for purpose of repayment of overcharges impounded by company in pursuance of stipulation. For decision by the United States Supreme Court reversing and remanding to this court for further proceedings, see 21 P.U.R.(N.S.) 480.

WILBUR, C. J.: This action was brought by the Pacific Gas and Electric Company, hereinafter called the company, to enjoin the operation of rates fixed by the California Railroad Commission, hereinafter called the Commission, for the use of gas in the city and county of San Francisco and vicinity. Two claims are made in the bill of complaint, one that the Commission had denied due process of law in fixing the rates, and the other that the company was denied just compensation for the use of its property by the new rates.

A 3-judge court was organized to hear the application for a temporary injunction, as required by law. (28 USCA § 380.) The matter was referred to a special master for report. Upon the hearing of the exceptions to his report, this court concluded that the refusal of the Commission to consider any evidence with relation to the cost of reproduction new of the property of the gas company was an arbitrary refusal to consider evidence with respect to the value of the property which the Supreme Court had declared essential to a proper determination of the question of value and confiscation. We therefore found it unnecessary to pass upon the question of confiscation in view of our conclusion as to denial of due process of law in the fixing of rates. Appeal was taken to the Supreme Court which on rehearing reversed our decision and remanded the case to this court for further proceedings in accordance with the opinion.

The parties have furnished stipulated supplementary proof as to income and expenses and have filed additional briefs to supplement their briefs filed before the special master, and those before the court on exceptions to the special master's report. It thus becomes our duty to determine whether or not the rates fixed by the Commission were confiscatory for the years 1934, 1935, and 1936, in that they denied the plaintiff an opportunity to obtain a fair return upon the fair value of its property. It has been stipulated that our findings should cover each year in which the rates are effective, estimated upon the same rate base as is found to be correct for the year 1934. That is to say, the change in capital investment during the period from 1934 to 1936 is agreed to be negligible.

In April, 1936, during the progress of this litigation, the plaintiff consented to the reduction of the rates. Consequently, the prayer for a permanent injunction has been abandoned and the sole remaining question is as to the distribution of the fund resulting from the collection by the company for gas at the old rates, as permitted by the temporary injunction.

[1] It appears from the report of the special master that he concluded that the historical cost of the property found by the Commission to be a reasonable rate base was not such and on the evidence before him determined that the proper basis for determining the fair value of the property of the company was the "reproduction cost new" of the property less accrued depreciation. Thus the Commission rejected the evidence of reproduction cost new and based its determination of the fair value of the property almost exclusively upon the historical cost of the property, while the special master rejected historical cost as evidence of value and took the exact figures of the company's estimate of reproduction cost new, less depreciation, as fixing the fair value of its property.

The decisions of the Supreme Court are uniform to the effect that both these elements should be considered in arriving at the fair value of the property. The composite result of such consideration, it is thus decided, will be more nearly fair to the utility and to the public than a rate base fluctuating with every turn of the market value of supplies and the cost of labor. In the case at bar (California R. Commission v. Pacific Gas & E. Co. [1938] 302 U. S. 388, 82 L. ed. 319, 21 P.U.R.(N.S.) 480, 487, 488, 58 S. Ct. 334) the Supreme Court construed the decision of the Commission as a finding that the historical cost of the property, undepreciated, was the fair value of the company's property upon which it was entitled to a fair return. We quote from the opinion in that regard as follows:

"In the instant case we cannot say that the Commission, in taking historical cost as the rate base, was making a finding without evidence and therefore arbitrary. . . .

"The Commission specifically found what it considered to be the rate base. 39 Cal. R. C. R. 53, 80, 1 P.U.R. (N.S.) at p. 28. The Commission found that rate base to be reasonable. Id. p. 81, note, 1 P.U.R.(N.S.) at p. 29. The import of its opinion is that the rate base represented the Commission's conclusion as to the value which should be placed upon respondent's property for the purpose of fixing rates."

[2, 3] The court also clarified our duty in the premises by holding that the findings of the Commission must be sustained unless overcome by convincing proof. The courts stated:

"There is a further contention as to the burden of proof. But the applicable rule is clear. Respondent is in a Federal court complaining of the constitutional invalidity of state-made rates and respondent is held to the burden of showing that invalidity by convincing proof. Los Angeles Gas & E. Corp. v. California R. Commission, 289 U. S. 287, 350, 77 L. ed. 1180, P.U.R.1933C, 229, 53 S. Ct. 637; Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 U. S. 151, 169, 78 L. ed. 1182, 3 P.U.R.(N.S.) 337, 54 S. Ct. 658, 665; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 U. S. 290, 298, 78 L. ed. 1267, 1274, 3 P.U.R.(N.S.) 279, 54 S. Ct. 647."

An examination of the cases thus cited by the Supreme Court in support of the rule as to the burden of proof, and of other cases since decided, indicate more fully the duty of this court in approaching and disposing of the

problem. While it is quite true that the Federal courts, in determining questions of confiscation in violation of the Fourteenth Amendment, exercise their own independent judgment as to the facts and may disagree with the factual conclusions of the rate-fixing body, it cannot disregard such findings. It has become clearer in later decisions of the Supreme Court that due respect must be paid to the judgment of the rate-making body where its conclusion of fact must necessarily result from the exercise of its judgment upon conflicting evidence. While in a technical sense the court, in considering a rate alleged to be confiscatory, exercises its own independent judgment on both the facts and the law, and does not sit as a reviewing court, it is in essence called upon to pass upon the judgment of the rate-making body, and some consideration must be given to its decision in the region in which fair and independent judgment may be exercised by those charged with the duty of ascertaining the facts [1] and where that judgment has been fairly exercised and the result is reasonable the court sufficiently discharges its duty to exercise its own independent judgment by finding the result arrived at by the rate-making body to be reasonable. The finding of the rate-making body should always be in focus when the evidentiary facts are considered. This rule is clearly implied in many other recent decisions by the Supreme Court, notably in Los Angeles Gas & E. Corp. v. California R. Commission, *supra,* wherein the 3-judge district court and the Supreme Court on review, analyzed the findings of the Railroad Commission of California, and determined whether or not such findings were reasonable and supported by evidence, and in exercising its own independent judgment sustained the conclusion of the Commission that although it had expressly declined to give a specific valuation to the element of "going concern value" of the utility's property as a part of the rate base it had nevertheless given a substantial recognition thereof in its valuation. Dayton Power & Light Co. v. Ohio Pub. Utilities Commission, *supra;* see also, Denver Union Stock Yard Co. v. United States (1938) 304 U. S. 470, 82 L. ed. 1469, 24 P.U.R. (N.S.) 155, 58 S. Ct. 990. In Lone Star Gas Co. v. Texas (1938) 304 U. S. 224, 82 L. ed. 1304, 24 P.U.R. (N.S.) 119, 58 S. Ct. 883, it was held that the utility company was entitled to attack the findings of the Texas Railroad Commission on the same basis as that on which they were made. See also, United Gas Pub. Service Co. v. Texas (1938) 303 U. S. 123, 82 L. ed. 702, 22 P.U.R.(N.S.) 113, 58 S. Ct.

[1] As stated by the Supreme Court in Ohio Bell Teleph. Co. v. Ohio Pub. Utilities Commission (1937) 301 U. S. 292, 304, 81 L. ed. 1093, 18 P.U.R.(N.S.) 305, 313, 57 S. Ct. 724, 730:

"Regulatory Commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. West Ohio Gas Co. v. Ohio Pub. Utilities Commission (No. 1) (1935) 294 U. S. 63, 70, 79 L. ed. 761, 6 P.U.R.(N.S.) 449, 55 S. Ct. 316, 320; West Ohio Gas Co. v. Ohio Pub. Utilities Commission (No. 2) (1935) 294 U. S. 79, 79 L. ed. 773, 6 P.U.R. (N.S.) 459, 55 S. Ct. 324; Los Angeles Gas & E. Corp. v. California R. Commission, 289 U. S. 287, 304, 77 L. ed. 1180, P.U.R.1933C, 229, 53 S. Ct. 637. Indeed, much that they do within the realm of administrative discretion is exempt from supervision. . . ."

483, 493; also, Denver Union Stock Yard Co. v. United States, *supra.*

In San Diego Land & Town Co. v. National City (1899) 174 U. S. 739, 43 L. ed. 1154, 19 S. Ct. 804, it is stated that judicial interference is not justified unless "clearly and beyond all doubt the rate prescribed will necessarily have the effect to deny just compensation." In Louisiana R. Commission v. Cumberland Teleph. & Teleg. Co. (1909) 212 U. S. 414, 53 L. ed. 577, 29 S. Ct. 357, it is said that the rates established by the Commission were prima facie fair and valid and the burden of showing that they were confiscatory and unreasonable rests upon the complainant. In People ex rel. New York & Q. Gas Co. v. McCall (1917) 245 U. S. 345, 348, 62 L. ed. 337, P.U.R.1918A, 792, 38 S. Ct. 122, it was said that while the court will not analyze the evidence before the Commission to determine where the preponderating weight lies, "yet it will nevertheless enter upon such an examination of the record as may be necessary to determine whether the Federal constitutional right claimed has been denied." In the case of Los Angeles Gas & E. Corp. v. California R. Commission, *supra,* at pp. 240–242 of P.U.R.1933C, it was said:

"We do not sit as a board of revision, but to enforce constitutional rights. . . . The legislative discretion implied in the rate-making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory. And upon that question the complainant has the burden of proof, and the court may not interfere with the exercise of the state's authority unless confiscation is clearly established. . . . We have said that the judicial ascertainment of value for the purpose of deciding whether rates are confiscatory 'is not a matter of formulas, but there must be a reasonable judgment, having its basis in a proper consideration of all relevant facts.' Minnesota Rate Cases (1913) 230 U. S. 352, 57 L. ed. 1511, 33 S. Ct. 729, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18. . . ."

The court also quoted from Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 U. S. 276, 288, 67 L. ed. 981, P.U.R. 1923C, 193, 43 S. Ct. 544, 546, 31 A.L.R. 807:

"An honest and intelligent forecast of probable future values, made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. . . . But, again, the court has not decided that the cost of reproduction furnishes an exclusive test. . . . We have emphasized the danger in resting conclusions upon estimates of a conjectural character."

Quoting from the Minnesota Rate Cases, *supra,* at p. 452 of 230 U. S. the court said:

"It is fundamental that the judicial

power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases. The constitutional invalidity must be manifest, and if it rests upon disputed questions of fact, the invalidating facts must be proved. And this is true of asserted value as of other facts."

The court then proceeds:

"The weight to be given to actual cost, to historical cost, and to cost of reproduction new, is to be determined in the light of the facts of the particular case."

The duty of the court in determining the question of confiscation is squarely dealt with by the Supreme Court in St. Joseph Stock Yards Co. v. United States (1936) 298 U. S. 38, 80 L. ed. 1033, 14 P.U.R.(N.S.) 397, 404, 56 S. Ct. 720, where the district court, in passing upon the confiscatory character of rates fixed by the Secretary of Agriculture, declined to go further than to determine whether the Secretary's finding of value was based upon substantial evidence. In this situation the Supreme Court defined the duty resting upon the courts in such a case as follows:

"But this judicial duty to exercise an independent judgment does not require or justify disregard of the weight which may properly attach to findings upon hearing and evidence. On the contrary, the judicial duty is performed in the light of the proceedings already had and may be greatly facilitated by the assembling and analysis of the facts in the course of the legislative determination. Judicial judgment may be none the less appropriately independent because informed and aided by the sifting procedure of an expert legislative agency. Moreover, as the question is whether the legislative action has passed beyond the lowest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation, judicial scrutiny must of necessity take into account the entire legislative process, including the reasoning and findings upon which the legislative action rests. We have said that 'in a question of rate making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing.' Darnell v. Edwards, 244 U. S. 564, 569, 61 L. ed. 1317, P.U.R.1917F, 64, 37 S. Ct. 701. The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established. Los Angeles Gas & E. Corp. v. California R. Commission, 289 U. S. 287, 305, 77 L. ed. 1180, P.U.R.1933C, 229, 53 S. Ct. 637; Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 U. S. 151, 169, 78 L. ed. 1182, 3 P.U.R.(N.S.) 337, 54 S. Ct. 658; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 U. S. 290, 298, 78 L. ed. 1267, 3 P.U.R.(N.S.) 279, 54 S. Ct. 647. . . ."

The findings of the Commission in this case cover the whole range of facts involved in the rate-making process, not only the ultimate conclusion of rate base and return, but also the value of various items of property used and useful to be included in the rate base and upon depreciation, income, and expense. Each of these findings, as

we understand the decision of the Supreme Court in this case, is presumptively correct.

We, therefore, turn to an examination of the findings of the Commission which are attacked by the company.

Going Concern Value

[4–7] The Commission, in fixing the rates, made no allowance for going concern value as such. The company claimed $12,000,000 as an addition to the rate base for going concern value. The testimony of experts was adduced before the master and he fixed the going concern value at $10,000,000. The theory upon which the Commission denied any addition to the rate base because of going concern value was that the expenditures of the company necessary to produce the going concern value had been allowed throughout the history of the company as operating expenses to be deducted from the gross revenue in fixing the rate. The Commission points out that the operating expenses considered by them as proper to be deducted from the gross revenue under the new rate was an allowance of $800,000 for advertisement and other development expenses incident to expanding the business of the company. It is, therefore, argued by the Commission that inasmuch as the consumers of gas have already paid the costs incident to the acquisition of going concern value they ought not to be compelled to pay rates upon the capitalization of the results of such expenditures by the addition of going concern value to the rate base.

If going concern value were as definite and tangible as money, a complete answer to the contention of the Commission would be found in the decision of the Supreme Court in Public Utility Comrs. v. New York Teleph. Co. 271 U. S. 23, 70 L. ed. 808, P.U.R.1926C, 740, 46 S. Ct. 363. There the company had accumulated a depreciation reserve far in excess of the actual depreciation. These reserves, of course, had come from the ratepayers. It was held that the reserve thus acquired belonged to the company regardless of whether or not it was greater or less than the actual depreciation and that the company could not be required to use its funds thus acquired to pay for future depreciation, but that the new rates must take care of the anticipated depreciation of the plant. So, if we assume that the property of the company has a going concern value of $12,000,000, and apply the principle announced in Public Utility Comrs. v. New York Teleph. Co. *supra,* it would result that it was wholly immaterial whether the going concern value of the company was paid for out of expenses deductible from the gross income and thus derived from the ratepayers, or whether it resulted from capital investment by the company. It seems to be the law, however, that in dealing with so intangible a thing as going concern value it is proper to consider the fact that this value may be the result of expenditures made by the company derived not from the net income from the property nor from capital, but from amounts claimed and allowed as operating expense. See Idaho Power Co. v. Thompson, 19 F. (2d) 547, P.U.R.1927D, 388. In this connection the Commission contends, and it is not controverted, that the going concern value of the company's property

is almost entirely the result from expenditures from the gross income over a long period of years during which the company has been subject to the rate-making power of the Commission. These expenditures have averaged yearly more than a quarter of a million dollars ($275,000) for the last four years during which manufactured gas was used, and over three-quarters of a million ($778,992) during the first four years of natural gas use. For the last twenty years (1913–1932, inclusive) the expenditures for the promotion of the gas business have exceeded $5,000,000 ($4,215,688 during the eight years have specified). Assuming that these expenditures have increased the going concern value by the amount thereof, it seems to be recognized that in dealing with the question of confiscation wherein the company is entitled to a fair return upon the fair value of its property, so much of going concern value resulting from expenditures paid by consumers in addition to a fair rate of return on capital, may be justly disregarded. See discussion in Idaho Power Co. v. Thompson, *supra.*

The earlier cases on going concern value seem to indicate clearly that going concern value as such should be definitely reflected in the rate base but recent decisions have modified this rule. Of course, if the rate base makes an allowance for capital sufficiently great to include an amount sufficient to cover going concern value as in the Los Angeles Gas & Electric Company Case, *supra,* it is quite immaterial that going concern value is not allowed eo nomine. But the latest decision of the Supreme Court on going concern value, Denver Union Stock Yard Co. v. United States (1938) 304 U. S. 470, 82 L. ed. 1469, 24 P.U.R.(N.S.) 155, 161, 58 S. Ct. 990, holds definitely that going concern value need not be accorded a specific value in the rate base; but more important still that decision holds that if the record shows that the property of the corporation dedicated to the public use is valued as a going concern, this is a sufficient recognition of going concern value. The decision is so important and so recent that we quote therefrom at length:

"Going Concern Value. Appellant maintains that, while admitting it exists in the property, the Secretary [of Agriculture] failed to include in rate base any allowance on account of it, and that the evidence requires addition of at least $325,000 to cover that element.

"In substance, the Secretary's findings state: The stockyard is a going concern; it has a long history of efficient management and has won a reputation for good service; it has been financially successful. His valuation engineer (whose figures and valuation are the basis of the Secretary's appraisal) considered going concern value but did not include a separate amount for it. In adopting the value of the land and the cost of reproduction new less depreciation of structures, consideration was given to the element of going concern value. Adequate allowance has been included, although no separate item on its account has been set forth. The findings contain a 'summary of the value of used and useful land, the cost of reproduction new of structures and equipment, including direct construction overheads, indirect overheads, interest on

sed and useful land during construction, and working capital, and the cost f these, less depreciation where depreciation exists, of respondent [appellant] as a going concern. . . . t is found that the fair value of the roperty of respondent as a going concern is $2,792,681. . . .'

"While it may be considered as nade up of tangible and intangible lements, it is not necessarily to be ppraised by adding to cost figures ttributable to mere physical plant omething to cover the value of the usiness. Kennebec Water Dist. v. Waterville (1902) 97 Me. 185, 220, 4 Atl. 6, 60 L.R.A. 856. Value depends upon use and is measured, or t least significantly indicated, by the profitableness of present and prospective service rendered at rates that are just and reasonable as between the owner of and those served by the property. . . . It is elementary that value of a going concern may be less han, equal to, or more than, present cost of plant less depreciation plus necessary supplies and working capital. See Galveston Electric Co. v. Galveston, 258 U. S. 388, 396, 66 L. ed. 678, P.U.R.1922D, 159, 42 S. Ct. 351, 355; Los Angeles Gas & E. Corp. v. California R. Commission, 289 U. S. 287, 313, 77 L. ed. 1180, P.U.R.1933C, 229, 53 S. Ct. 637, 647; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 U. S. 290, 78 L. ed. 1267, 3 P.U.R.(N.S.) 279, 54 S. Ct. 647. Appellant's plant without business, present or prospective, would be worth much less than the cost figures found by the Secretary to represent value. Appellant's claim, that the rate base includes nothing on account of going concern value, is without foundation in fact.

. . . . . .

"None of these considerations has much, if any, bearing on the ascertainment of going value or the application of the rule that it is to be taken into account in confiscation cases. That element is not separate from or necessarily in excess of reasonable cost figures attributable to the plant. The Secretary considered its location, the volume and flow of shipments, percentages of sales to receipts, privileges in transit, cost of service, past history, future prospects, and other pertinent facts. Appellant does not claim that its past operations clearly reflect excellence of service and low cost per unit in comparison with results attained by other stockyards, or that conditions affecting performance give dependable assurance of future growth and capacity to earn net returns at relatively low rates. See e. g. McCardle v. Indianapolis Water Co. (1926) 272 U. S. 400, 413, 71 L. ed. 316, P.U.R.1927A, 15, 47 S. Ct. 144, 149. Its evidence falls far short of condemning as arbitrary and confiscatory the Secretary's refusal to add a separate amount to his rate base to cover going concern value."

It is clear that the scheme of valuation adopted by the Commission fully recognizes the fact that the property dealt with is that of a going concern and that its separate elements are appraised as such and, consequently, that the value fixed for the property of the company is as an operative whole and as a going concern. To cite one item only, as illustrative of others, in fixing the value of the gas mains under-

ground, allowance is made not only for the cost of the pipes used for this purpose but for the expense of burying them underground which has been added as a part of the cost of the system. Unless this part of the property is considered and appraised as a part of a going concern it is obvious that the buried pipe is worth as much less than it was before it was buried, as would be the cost of digging it up. So of every appliance of the company located at its appropriate place in the system the expense of location would decrease the value of the property instead of increasing it unless it is considered as a part of a going concern. It is, of course, unanimously agreed that the cost of installation of pipe lines and appliance is a proper element to enter into the rate base, whether historic cost or reproduction cost new less depreciation is accepted as such base. The point is that this universally conceded method of evaluation necessarily involves an appraisement of the property as a part of a going concern.

There is, therefore, no doubt that the Commission recognized the going concern value and also that it declined to make a specific allowance therefor in the rate base on the theory that that value was already reflected in the historic cost and in the rate base deduced therefrom so far as the company was entitled to have the value considered. However, bearing in mind the long line of cases in which the Supreme Court has held affirmatively that going concern value is property upon which the public utility is entitled to a reasonable return, and also the fact that the decision in each case is based upon the facts of the particular case, it is clear, we think, that the Supreme Court in Denver Union Stock Yard Co. v. United States, *supra,* did not hold that the mere appraisal of the specific items of property in the system as a part of a going concern is such full recognition of going concern value as is required by the law as laid down by the Supreme Court. In addition to the difficulties we have already pointed out in considering and estimating going concern value is the fact that there is no definite and certain method of making an appraisement thereof. A percentage on the value of the property is often adopted. It has been suggested that going concern value can be measured by the market value of the plant as a going concern over and above the physical property therein, but as market value has been expressly repudiated as a basis for fixing the fair value of property devoted to public use because it depends upon the rates fixed it will not do to resuscitate the doctrine with reference to this particular item of value. The opinions of experts in this case and in any other as to going concern value must depend in large measure upon the interpretation placed by the expert upon the decisions of the Supreme Court with reference to what elements constitute going concern value, so the opinion is a mixed one of law and fact, and the opinions expressed thereon by experts are not particularly helpful in arriving at a just conclusion and are certainly not conclusive thereon.

The Commission, in its brief, states that ". . . every dollar expended for the maintenance of the property in such splendid condition, the retirement of worn out and obsolete plants,

the training of the personnel, as well as all costs of promoting the expansion of the business, have been a charge against consumers out of the operating expense allowed by the Commission in addition to the investor's return."

We cannot say that there is so clear a showing of additional going concern value as would justify us in entirely rejecting the judgment of the Commission thereon. As stated by the Supreme Court, speaking through the Chief Justice, in St. Joseph Stock Yards Co. v. United States, *supra,* at p. 412 of 14 P.U.R.(N.S.):

"The decisive point on this appeal is that, in seeking a separate allowance for going concern value, in addition to the value of the physical plant as found, and in maintaining that the property was being confiscated because of the absence of that allowance, it was incumbent upon appellant to furnish convincing proof."

In view of the fact that the company has been allowed such large amounts for promotion and advertisement and has built up its going concern value entirely from the proceeds derived from its customers while conducting its business at a profit, and in view of the further fact that the going concern value is necessarily reflected to a large extent in the valuation of every part of its property, all of which is valued as a part of the system, it would seem that a relatively small additional amount should be allowed for going concern value.

As we hereinafter indicate, the unamortized portion of the cut-over expense of $935,506.12 incurred in prior years may be included in the going concern value instead of in the operating expense.

We hold that it has not been convincingly shown that the Commission was in error as to going concern value except that we hold that $935,506.12, and no more, should be added to the fair value of physical properties for going concern value in lieu of the allowance by the Commission of this item as an operating expense.

Obsolete Property

Gas manufacturing plant.

[8] The next question to consider is the investment in retired gas plants. The basic question is whether or not these plants are usable. Los Angeles Gas & E. Corp. v. California R. Commission, *supra.* If the manufacturing plants are rendered useless by reason of the introduction of natural gas, these items should no longer be included in the capital structure of the company.

The Commission held the value of gas manufacturing capital not used or usable to be $1,733,344. The evidence justifies the conclusion of the Commission that these standby plants, to the extent of the amount mentioned, are no longer used or useful for public purposes. The fair value of the property of the company used and usable for public purposes should be reduced by the amount of $1,733,344.

Reproduction Cost New

[9, 10] The cost to reproduce new, less depreciation, is not the equivalent of the value of the property. It is evidence of the value. The ascertainment of a reproduction cost new in rate-making cases is not a matter of exact equivalent upon the market of supplies, and the cost of labor on the date the rates go into effect, or on any other

particular day. The value to be assigned to the cost of reproduction new depends upon many variables. The selection of the particular cost to be used is a matter of judgment. The courts have indicated that in estimating the cost of reproduction new the data should not be confined to any particular day but should represent as near as may be averages maintaining through a period which represents a reasonable time for the actual reconstruction or duplication of the property. For the purpose of ascertaining the cost of reproduction new on the date the rates go into effect, the average construction and material cost for a substantial period must be considered. After obtaining a result based upon such calculations and predicated upon a certain period of years it is important also to note the price trends to determine the value of the property at the time of and immediately succeeding the date upon which the rates are fixed. If the prices have an upward tendency that fact should be reflected in the rate base. On the other hand, if the tendency is downward that fact should be considered. In the case at bar witness McNamara, who testified as to reproduction cost new, set forth his estimates of cost to reproduce new at the average prices for the years 1928 to 1932, for a 4-year average, July 1, 1929, to June, 1933, and for a 6-month average, January to June, 1933.

The master accepted McNamara's figures as uncontradicted and taking an average for the four years which would be required to reproduce the property found the present value as new for the period of the operation of the rates to be $117,014,158.

As the company does not complain of the special master's average, and furnished the testimony upon which it is based, and does not object to the inclusion of 1933 in the average, we will not.

After stating the economic conditions in his report and after discussing $117,000,000 as an average reproduction cost, the master says:

"I would be inclined, nevertheless, despite the logical implication of the reproduction cost method in taking care of the time element to adopt a lower figure, say $115,000,000, or even the spot figure of July 31, 1933, $114,329,363." Nevertheless, the master fixes the value of the company's property as a going concern undepreciated at $128,426,286 for the year ending July, 1934. He accepts the figure of $16,121,090, testified to by the company's witness, as the depreciation, leaving as the rate base $112,305,196. This figure, as we have already indicated, includes an estimate for going concern value of $10,000,000. We have held that the only item of going concern value which has been satisfactorily proved over and above the allowance therefor already incorporated either in historical value or reproduction cost and not taken care of from time to time by allowance for operating expenses, is $935,506.12, the unamortized cut-over expense up to the end of 1933. If we accept the master's figures otherwise, his rate base is too great by $9,064,493.88. This would give a rate base of $103,240,703. Deducting therefrom $1,733,344, the value of gas manufacturing capital not used or usable which should not be included in the rate base, we have the balance of

$101,507,359 as the rate base derived from the cost of reproduction new less depreciation.

[11] In considering this matter two major controversies arise in the case, one concerning the value of the transmission system composed of cast-iron pipes which have already exhausted a large part of the assigned useful life; the other concerning the standby manufacturing plants. Witness C. C. Brown contends that the cast-iron pipe laid with bell and spigot joints would no longer be laid in reproducing the company's property; that instead, welded steel pipe would be used. He concludes that the expenditure of $6,380,000 for repairs to prevent leaks of natural gas is an indication that the present system of cast-iron pipes is worth $6,000,000 less than a corresponding system of new cast-iron pipes (ignoring depreciation). The same witness also estimates that the plants of the company used for the production of manufactured gas for standby purposes could be replaced by plants to manufacture gas from butane, which could be built for $8,500,000 less than the cost to reproduce new the manufacturing plants included in the company's property for standby purposes. This witness' estimate would be less by nearly $15,000,000 than the estimate of cost of reproduction new offered by the company's witnesses.

The witness McNamara claims that the Commission's expert, witness Brown, is in error in estimating $2,500,000 for the construction of butane gas manufacturing plants for the replacement of the standby plants for which a value of $11,176,338 is claimed by the company as the cost to reproduce new. In the company's estimate, compressor and booster equipment having a value of $3,169,247 was included which would reduce the difference between the cost of new butane plants and the cost to reproduce new the present manufacturing plants to a little less than $5,500,000.

Willis S. Yard filed an affidavit on behalf of the company claiming that butane gas generators would not be a practical replacement for the present manufacturing plants because the product so produced could not be burned in the customers' burners without adjustment, while the gas produced by the present plants as already altered for that purpose, could be burned without alteration of the customers' burners.

An examination of the evidence shows that the greater proportion of the difference of $11,800,000 between the historic cost of the company's property and the estimate of cost to reproduce it new is in the production property constructed before 1919 and in the transmission lines laid by the company before 1919. The difference in the former was $1,000,000 and the latter $10,000,000.[2]

If we assume that in re-laying these transmission lines new welded steel pipe would be or could be used in lieu

[2] The company states in its brief:

"It appears from that table that of the total of $11,800,000 by which the reproduction estimate exceeds the original cost, $1,000,000 is found in the property under the head of production capital which was in existence in 1919, and some $10,000,000 in property under the head of distribution capital which likewise was in existence in 1919. This is in accord with Mr. McNamara's affidavit and with the conclusion which the master drew.

"A large part of the production capital consists of plants for manufacturing gas, both those supplying communities not now served with natural gas and those now in use in the natural gas divisions as standby plants.

of the more expensive cast-iron pipe, with joints adapted to carry natural gas, it would not seem unreasonable for the Commission to allow the company in its rate base the actual cost of the cast-iron pipe system rather than the lesser cost of laying new steel pipe with welded joints, or the cost of reproducing the cast-iron system new, particularly where allowance has been made in part for the cost of modification of the present system by the expenditure of several millions to equip the cast-iron joints to carry natural gas. If we bear in mind that neither historic cost nor reproduction cost is conclusive evidence of value for a rate base and that both should be considered in arriving at the fair rate base, we cannot say that the Commission erred in its conclusion to accept historic cost as to the transmission system. The same proposition is involved in the manufacturing plants where there is a difference of $1,000,000 in the cost to reproduce new and in the historic cost. This is particularly true in view of the evidence that the plants could be replaced by a new plant equally effective with a saving of from $5,500,000 to $8,500,000. If the Commission had accepted the estimate of the witness Brown in its rate base we would be compelled to express an opinion on the conflicting claims as to the effectiveness of the butane gas production system proposed by the witness and opposed by the company's witness McNamara, as above stated.

We hold that there is no clear showing of error in including in the rate base the historic cost of these two items, instead of the cost to reproduce new. This will reduce by $11,000,000 the estimate of the value of the company's property and fix a rate base of $101,605,359 minus $11,000,000, that is, a rate base of $90,507,359.

The rate base fixed by the Commission ($105,000,000) depreciated by the amount of the depreciation reserve ($13,051,839) is $91,948,161, which exceeds the value arrived at by the special master adjusted as above to $90,507,359. But the Commission held, in effect, that the company was entitled to a reasonable net return on the depreciation reserve as compensation for its annually accruing depreciation.

Gross Return

[12] The Commission estimated the return reasonably to be expected from the new rates to be $20,400,000; the special master estimated such return at $20,198,318.29, basing his conclusion upon the returns actually received during the period the rates had been in effect. The actual return for the year 1934, at the rates fixed by the Commission, was $29,676.62 less than that estimated by the master. In the year 1935 the actual return had increased to $22,051,590.95, making a total increase based upon the new rates of $2,135,150.60, allowance being made for the decrease of $281,978.95 of income taxes actually paid. In 1936 the gross income for gas sold, if paid for under the new rates fixed by the Commission, was $23,887,263.61, which, after making allowance for overestimated taxes of $257,940.70,

"The distribution capital consists of the distribution systems in the various communities served. Those systems consist largely of mains and service pipes. The distribution systems have for the most part been in existence for many years."

was $3,946,886.02 over the Commission's estimate therefor.

It should be noted that the question as to the 1934 gross return is whether or not the estimate of the Commission was reasonable under all the circumstances. If so, it is not material that the return actually received was less than that reasonably anticipated. The view of the special master that the return actually received was decisive on the question of confiscation was erroneous. We accept the conclusion of the Commission that $20,400,000 gross return for 1934 was reasonably to be anticipated if adjustments are made for average temperatures.

The special master relied upon the decision of the Supreme Court, written by Justice Cardozo, in West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 U. S. 79, 79 L. ed. 773, 6 P.U.R.(N.S.) 459, 462, 55 S. Ct. 324, wherein it is stated: "A forecast gives us one rate. A survey gives another. To prefer the forecast to the survey is an arbitrary judgment." This statement, however, was addressed to the action of a Public Service Commission which on March 10, 1933 (1 P.U.R.(N.S.) 61) fixed a rate to be retroactively applied from August 16, 1929, to February 16, 1933, and ignored the evidence that the actual net revenue for both 1930 and 1931 was inadequate, and based its rate upon the revenue and expense for the year 1929. Had the rate been established in 1929 instead of in 1933 the situation would have required prophecy on the part of the rate-making body and its conclusion could not have been overborne by subsequent actual experience in determining whether the rates were reasonable when fixed.

The case of McCart v. Indianapolis Water Co. (1938) 302 U. S. 419, 82 L. ed. 336, 21 P.U.R.(N.S.) 465, 58 S. Ct. 324, also is not inconsistent with our conclusion. In that case the public utility company brought an action to restrain the enforcement of an order fixing a temporary schedule of rates. Pending its further investigation, an interlocutory injunction was denied and the rates became effective. On December 30, 1932, the Public Service Commission adopted different and permanent rates effective January 1, 1933. This order was attacked by an amended and supplemental complaint but no interlocutory injunction was sought and the rates became effective. The special master to whom the matter was submitted on April 18, 1934, offered to receive evidence of the actual return and expenses of the company for the year 1933, but both parties declined to present such evidence. The decree of the district court was not entered until November 29, 1935 (13 F. Supp. 110, 12 P.U.R.(N.S.) 478). The Supreme Court held that the district court should have received evidence of the actual operation of the rate-making ordinance in view of the fact that the ordinance had been in effect and the court was only concerned with the question of whether or not the rates were confiscatory at the time the decree was made or to be made. This case is not authority for the impossible proposition that a rate-making body can only fix rates retrospectively. Its duty is to fix rates in advance and such rates are to be tested by the conditions known to it and ascertained as nearly as possible for the

future. If the rates so ascertained are reasonable they are valid and cannot be enjoined unless and until it is shown that the rates, reasonable when ordered, have since become unreasonable and confiscatory; and by the same rule, if the rates, unreasonable when made, have become reasonable by reason of changed conditions the rates should for such period be enforced.

Hence, we must determine whether the Commission's order was confiscatory for the year 1933, judging the order by the information then known to the Commission, and accepting its estimate of revenue, unless standing in its shoes we can say that the estimate of revenue and expense was clearly erroneous. If we hold this order nonconfiscatory for 1933, it must be conceded to be valid for 1934, 1935, and 1936 when the returns were greater.

The city of Oakland, intervener, takes the position to the contrary and contends that if the rates for the period from July 1, 1933, to May, 1936, based upon an average return for the whole period, give a fair return, the rates will not be held confiscatory for any part of the period. In pursuance of this theory it furnishes tables from which it deduces a return of 6.21 per cent for the first year (1933–1934); a return of 7.23 per cent for the period (1934–1935), and a return of 8.28 per cent for the nine months (July 1, 1935, to April, 1936)—an average of 7.23 per cent for the entire period. These conclusions are based upon the Commission's estimate modified by actual results, and omitting amortization charges for the whole period aggregating $2,271,243.06. Similarly, using the special master's sinking-fund method for estimating depreciation, and the Commission's rate base ($105,000,000) less accrued depreciation ($12,051,839), which equals $91,948,161, the city of Oakland claims an average return of 7.41 per cent as follows: 6.24 per cent, 7.41 per cent, 8.48 per cent, for the respective periods above mentioned. In support of its contention the city relies upon the decisions of the Supreme Court in United Gas Pub. Service Co. v. Texas (1938) 303 U. S. 123, 82 L. ed. 702, 22 P.U.R.(N.S.) 113, 58 S. Ct. 483; St. Joseph Stock Yards Co. v. United States (1936) 298 U. S. 38, 80 L. ed. 1033, 14 P.U.R. (N.S.) 397, 56 S. Ct. 720; West Ohio Gas Co. v. Ohio Pub. Utilities Commission, *supra*. These cases hold that it is proper and necessary in making estimates of returns under a proposed rate-making order that a period of years be considered, rather than a single test year. In the main, these cases deal with the duty of the rate-making body, which is prospective, and consequently, refer to past years of experience rather than to actual experience under the rate-making order. The decision in United Gas Pub. Service Co. v. Texas, *supra*, was rendered on an appeal from the courts of Texas, where the rate-making order was not effective until ordered enforced by the court which considered the whole matter de novo. It was held that the trial court could and should consider the period up to the time of trial (spring of 1934) as well as the 4-year period prior to July 31, 1932, but the case on appeal ". . . must be judged as it stood before the trial court" in March, 1934, and not as it stood on appeal in October, 1935, nor,

as we may add, not as it stood on appeal to the Supreme Court in February, 1938. This decision must be read in the light of the power of the Texas court under the law of Texas to consider the question of whether the rates are reasonable and just. See statutes cited in the Supreme Court decision and quoted in the footnote thereto (Arts. 6058, 6059, Rev. Civil Stats. of Texas (1925)). We have already considered the case of West Ohio Gas Co. v. Ohio Pub. Utilities Commission, *supra,* and have shown that the rates there considered were fixed in March, 1933, retroactively for the period from August 16, 1929, to February 16, 1933.

We hold, then, that the estimated income of $20,400,000 for the company should be decreased by the estimated expenses if reasonable in determining the validity of the order.[3]

If we take the amount of gas actually sold and increase it by the amount which would have been sold in the year of average temperature and charge for the amount of gas thus determined at the new rates for the year 1933–1934, we get an amount exceeding by $500,000 the actual receipts at the new rates.

Net Income

Using the deductions from the gross return, allowed by the special master for expenses, to find the net income, and using the actual gross income of the company ($19,794,572.81), adjusted at the rates fixed by the Commission for the gas sold, we find they would give a net income upon the rate base fixed by the master ($112,305,196) of 3.89 per cent for 1934, and similarly upon the gas sold at the rates fixed by the Commission of 5.8 per cent for the year 1935, and of 7.8 per cent for the year 1936.

Upon his estimate of a return of 3.89 per cent the special master held the rate to be confiscatory and the rate-making order consequently void. The larger return for subsequent years (1935, 1936) was not before him.

Net Return on Historic Cost

The special master found a going concern value of $10,000,000. Adding this to the historic cost as determined by him ($104,941,158) we get an undepreciated rate base of $114,941,158. Deducting depreciation (estimated by the special master on the historic cost basis as $13,051,839) the rate base would be $101,889,319. The net income, allowing deductions as determined by the special master would be 4.7 plus per cent thereon for the year 1934, 6.8 per cent for 1935, and 8.6 per cent for 1936.[4]

[3] Table omitted shows estimates of revenues, expenses, historical cost, and findings by Commission.

[4] For convenience in the consideration of the various items entering into the rate base and into the appropriate deductions from the gross income, it should be noted that with a rate base of $100,000,000 a variation of $1,000,000 in return would make a difference of 1 per cent in the net rate of return and that if we accept the rate of return fixed by the Commission on the fair value of the company's property as reasonable (6⅜ per cent) on the rate base of $100,000,000, a variation of $15,000,000, in the rate base would vary the return by a like amount (1 per cent). The difference ($7,305,196) between the rate base adopted by the Commission ($105,000,000) and that adopted by the special master ($112,305,196) accounts for about ½ of 1 per cent in the rate of net return.

Table VI shows the conclusion of the special master on lives and values used in his estimate of a sinking-fund annuity. [Table omitted.]

Deductions Allowable from Gross Income to Determine Return

With reference to the proper allowances for operating expense and depreciation there are quite a number of differences between the parties herein but, first we will consider some of the larger items in dispute.

[13, 14] *Cut-over and repair.* One item is $982,165 for amortization of expenses incurred in previous years. One of the expenses, cut-over expense, was for adjusting appliances belonging to consumers to adapt such appliances to use natural gas when it was substituted for manufactured gas. The cost was incurred in the years 1929 to 1932, but by permission of the Commission was amortized over a number of years.

The other expense is for expenditures incurred in the years 1931 and 1932, for repairing or modifying the cast-iron pipe system used in the company's distributing system to reduce gas leakage by placing metal or cement clamps about the pipe joints. Beginning in the year 1931, for the purpose of spreading over future accounting periods the costs then being incurred, this expense, instead of being charged directly into maintenance expense accounts, was entered in a suspense account.

For the amortization of these expenses the company claims a charge of $982,165 against revenue for the year ending July 1, 1934.

It is clear that these items of past expense have no place in an estimate of expenses to be deducted in 1934 and thereafter in determining whether the net revenue to be derived from the new gas rates in 1934 and succeeding years is so low as to be confiscatory. The cost of adjusting appliances owned by consumers was in the nature of an expense to get and to retain business. The company elected to pay the expense necessary to change over their customers' appliances. Such expense may properly be reflected in the going concern value of the company's business but not in its expenses for years subsequent to the year in which they were actually made. The expenditure made to repair the mains and pipes of the company's distributing system was clearly to maintenance expense properly chargeable in the years in which the expense occurred and was deductible from the revenue of those years. If, on the other hand, it be treated as a betterment or addition to capital because such expense was made necessary by the change in the character of the gas transmitted, it should be included in estimating the fair value of the company's property.

The contention of the company with relation to these expenditures is that it was expressly authorized by the Commission to place them in a suspense account and amortize them over the period of five years designated by the Commission in its orders, and that these orders were in effect orders permitting it an increased rate during the 5-year period designated in the orders for amortization; that in practical effect the Commission authorized the company to receive an addition of $982,165 net revenue for the year 1934, and that the subsequent order fixing the rate under attack deprived them of that amount of income.

We have no occasion to inquire into the extent of the authority of the Commission with reference to the

method of keeping the books of the public utilities controlled by it or the effect of its orders. The statute expressly authorizes the Commission to indicate and direct the method of bookkeeping it required of the company. The Commission, during this period, also made a number of orders temporarily fixing the rates to be charged by the company.

The total amount expended for cut over from 1929 to 1932 was $1,972,-641.97. At the end of 1933 there remained of this amount $935,506.12 not yet amortized. This large balance resulted partly because no amortization for these items was charged in 1932. It follows that that portion of the allowance for amortization for cut-over expense amounting to $657,-350 should be rejected as an expense for 1933–1934. As to the portion of this amount as has already been recovered by amortization as an expense of operation ($1,037,135.80 at the end of 1933) it would be manifestly unfair to add the amount to capital.

The expenditure for stoppage of leaks sought to be amortized occurred in the years 1931 and 1932. Whatever may be said of these charges and whatever arrangement may have been made or agreed to by the Commission, it is quite clear that they are not expenses incurred in the year 1933 and should not be deducted from the gross revenues of that year for the purpose of determining whether the rates fixed for that year are confiscatory. From the constitutional standpoint the expenditures for stopping leaks must be treated either as past expenses applicable to the years in which they occurred and therefore not to be recouped in subsequent years, or as betterments added to capital, or, preferably, as we will subsequently develop, as an allowance for past accrued depreciation to be considered in determining the sufficiency of the annual depreciation allowance made by the Commission for 1933–1934.

Amortization of Useless Gas Manufacturing Plants

[15] The Commission allowed $150,000 per annum for the amortization of the loss resulting from the manufacturing gas plants no longer used or useful for that purpose. The company claims it should have been allowed $238,092 per annum for this purpose, which was allowed by the special master. Upon the question of confiscation we are concerned only with a reasonable return upon property used or useful. Consequently, no allowance should be incorporated in the fair value of the company's property to cover these items nor should any amount for amortization be included in the deductions from gross revenue. The sum of $150,000 is not deductible as an operating expense.

Accrued and Annual Depreciation

[16–18] One of the principal difficulties in fixing just compensation for the use of the property of a public utility arises from the fact that such property continuously depreciates. To make a proper annual allowance for such depreciation and to ascertain its present value by a deduction of the accrued depreciation are the two phases of the problem. It is settled that in determining the fair value of the property for rate-making purposes it is essential that accrued depreciation be deducted from the cost to reproduce

new in using that evidence for the determination of the present value of the property. Similarly, in using the evidence of historic cost to determine present value there must be an appropriate deduction for accrued depreciation. The rate base should lie somewhere between the historic cost depreciated and the reproduction cost new depreciated.

The Supreme Court has held repeatedly that the question of confiscation is not a question of formulas, modes, or methods used in arriving at the rate, but whether or not, under all the circumstances, just compensation for the use of the property of a public utility at its present value has been denied. Under the Constitution the objective of the rate maker should be to ascertain the actual depreciation for the year or years in which the rates will be effective and to allow such depreciation as deduction from gross income; and, also, in measuring the return upon capital, to ascertain the value of the property as depreciated at the time of its use, as stated by Justice Butler speaking for the Supreme Court:

"The just compensation safeguarded to the utility by the Fourteenth Amendment is a reasonable return on the value of the property used at the time that it is being used for the public service. And rates not sufficient to yield that return are confiscatory." Public Utility Comrs. v. New York Teleph. Co. 271 U. S. 23, 31, 70 L. ed. 808, P.U.R.1926C, 740, 744, 46 S. Ct. 363.

Notwithstanding the decision of the Supreme Court in that case that an excessive depreciation reserve belonged to the company and could not be utilized by the Board of Public Utilities to eke out its estimate of income in later years, the Supreme Court has recently in a number of cases recognized the use of a sinking fund to take care of the annual and accrued depreciation. Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission (1934) 291 U. S. 227, 78 L. ed. 767, 2 P.U.R.(N.S.) 225, 54 S. Ct. 427; see also, Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 U. S. 290, 78 L. ed. 1267, 3 P.U.R.(N.S.) 279, 54 S. Ct. 647. By this method the company may invest its depreciation reserve as it sees fit, thus having the use of it long before the property requires replacement, but is charged a reasonable rate of interest thereon so that the sum of the annuities plus the interest shall equal, as near as may be, the average value of the property during its life expectancy. The court held that there was no confiscation of property inherent in such a plan and that the question of whether or not the allowance of depreciation thus made was reasonable was one of fact to be determined, in the first instance, by the rate-making body. The Commission, according to its opinion in this case, has "during its entire history" used the historical cost of property undepreciated with land at its present market value as the rate base, and to quote from its opinion, "consistent with this, it has used the sinking-fund method to determine the allowance for depreciation to be included in operating expenses." That is, as appears by its opinion in this matter, it has determined the life expectancy of the various elements of depreciable property involved, and has assigned to each a depreciation annuity

which at 6 per cent compound interest from the date it accrues until the end of the life expectancy would equal the cost (not the average or present value) of the property. This method, it will be observed, takes no account of the fluctuating value or cost of the various elements entering into the property but assigns to each a value (its cost when acquired by the utility company, if prudently acquired) which remains constant during its entire life. There is no place in such a rate-making plan for the use of the present value of the property, or average value, as determined from cost of reproduction new or otherwise. It follows that as the costs decrease, thus decreasing the present value of the property, the depreciation allowance fixed by the Commission would be too high, and as the reproduction costs increase the allowance would be too low. But the task of the court to determine whether or not a rate is confiscatory relates to the value of the property at the particular time when the rates under attack are to be effective. The question of confiscation is determined for this period by the return on the present value, notwithstanding the fact that a different method may have been used by the rate-making body in arriving at its conclusion. The Commission fixed the depreciation annuity for the company's property at $1,769,-119. The depreciation reserve carried on the books of the company at 6 per cent compound interest amounted to $13,051,839. The Commission determined that 6 per cent interest on this reserve ($783,110) plus the above annuity of $1,769,119 ($2,552,229 in all), was reasonable compensation to the company for the depreciation which would accrue during that year (1933), based on historical cost of the depreciable property of the company.[5] It also allowed for income upon the accrued depreciation by using an undepreciated rate base. The net result of the Commission's plan is that the public utility obtains its return at the rate fixed by the Commission upon its entire capital investment including the portion which has been lost by reason of deterioration. The rate fixed by the Commission in this case is estimated by it at 6⅔ per cent. Thus, while the company is charged with 6 per cent interest on its accrued depreciation as an addition to its depreciation reserve, it is allowed 6⅔ per cent interest thereon in the rate of return. The difficulty in passing upon the question of confiscation herein is enhanced by the necessity of translating this process of the Commission which, as it says, ignores present value, into one which must recognize and be based upon present value. This difficulty is further increased by the fact that capital expenditures of the company have been scattered throughout the entire history of the utility and hence, some of its capital expenditures were made at the time of high prices, and others, at the time of low prices. The Commission's brief states that 80 per cent of the company's property has been constructed since 1919 during a period of relatively high prices.

The witnesses for the company attempted to determine the accrued depreciation by taking the same proportion of their estimate of the cost to reproduce new that the depreciation reserve set up on the books of the com-

[5] Tables omitted.

pany bore to the historic cost (13.9 per cent). By this method, the figure of $16,121,000 is arrived at as an estimate of the depreciation which had accrued prior to June 15, 1933. This method of translating the depreciation reserve based upon historic cost to one based upon reproduction cost ignores the fact that the depreciation reserve upon the sinking-fund basis does not at any time represent the actual accrued depreciation. This difficulty is met in part by the expert testimony of James T. Ryan, the company's valuation engineer, based upon his intimate knowledge of the property and of its physical condition and of the reasonable life expectancy of such property. He fixed the amount of the depreciation of the gas properties as a whole at not less than 12 nor more than 16 per cent, "having a present condition of not less than 84 nor more than 88 per cent."

The special master, in analyzing the testimony of this witness, concluded that the amount stated by the witness for accrued depreciation really represented a depreciation reserve on the sinking-fund basis. The special master fixed the annual allowance for depreciation at $3,099,581. He arrived at this figure by what he characterized as a modified sinking-fund basis upon life expectancies of the various elements of the property determined by him differently from the determination of the Commission. To reach this conclusion he deducts from depreciable capital ($113,097,966) valued at reproduction cost, the accrued depreciation claimed by the company of $16,121,090, leaving a depleted value of $96,976,876, for the depreciable capital. He finds the sinking-fund annuity applicable to such base to be $2,132,326. To this annuity he adds 6 per cent interest on $16,121,090, or $967,265, giving $3,099,591. By this method the $16,121,090 estimated depreciation reserve is deducted from the rate base and at the same time taken as the fund in the theoretical reserve to which is added each year 6 per cent interest thereon for the reserve, plus the annuity of $2,132,326. That the difference between the result arrived at by the Commission and by the special master is due in part to the acceptance by the latter of different life expectancies for different elements of property, and in part to the use of higher values as reproduction cost new is shown by his estimate that the depreciation annuity on the historic cost basis should be $1,901,390, to which should be added 6 per cent on the depreciation reserve, giving a total of $2,684,500, as an estimate of the annual amount to be accumulated in the depreciation reserve.

Gilbert M. Thomas, an expert witness for the company, made an affidavit to the effect that he had computed the straight-line depreciation expense using the lives recommended and used by the witness Travis in his affidavit, offered in evidence by the Commission, and the estimated reproduction cost new stated by J. T. Ryan in his affidavit, and found that the depreciation expense so developed was not less than $4,046,771, but that by using the cost of reproduction new and the lives which the witness assigned to the various elements of the company's property, the depreciation allowance should not be less than $4,865,698. These estimates are based

upon the straight-line method and ignore the sinking-fund theory.

The question for our determination is whether the allowance for annual depreciation fixed by the Commission for the years 1934, 1935, and 1936 is clearly shown to be unreasonable.

We have already indicated that the Commission is justified in accepting this historic cost for transmission lines and production plant in lieu of the reproduction cost thereof. This would reduce the depreciable property by about $11,000,000 in value and would have a corresponding effect upon depreciation allowance. The amount allowed for amortization for repair of cast-iron pipe lines was in effect an allowance for depreciation or obsolescence. At any rate, it could be only justified upon that theory, it apparently being the practice of the Commission to take care of obsolescence due to unexpected changes in the utility business by making special allowances for amortization of the loss as an operating expense, which is consistent with its plan for a full return of capital. While we have held that these items are not proper charges against the gross income for the current years in which they were amortized, if these sums are regarded as an allowance for obsolescence, they should be added to the amounts for depreciation and thus to the depreciation reserve. The effect would be the same upon the net income whether they are deducted in one form or the other.

With reference to lives assigned to the property by the Commission we see no clear and unequivocal reason for departing from their estimate, notwithstanding the conclusion of the special master.

It should be noted also that abandoned and obsolete property has been written off against the depreciation reserve when it ceased to serve a useful function and that the physical properties of the company are well maintained.

We conclude that the sinking-fund annuity of $1,769,119 allowed by the Commission, plus 6 per cent interest on the depreciation reserve, $783,110.34, plus the net return on the same amount included in the rate base (estimated at 6⅜ per cent by the Commission $870,123.50, plus the amount allowed by way of amortization of the pipe repair suspense account $324,815, making a total of $3,747,167.84 cannot be said to be so clearly erroneous as to require us to reject it.

It follows that for the purpose of ascertaining the net returns on the depreciated base—the value of the company's property—the amount chargeable against the gross income for the year 1933–1934 as a depreciation annuity and allowance should be $1,769,119, plus $870,123.50, plus $324,815, which equals $2,964,057.50. We will consider the proper allowance for the years 1934–1935 and 1935–1936 later when dealing with that subject.

Other Controverted Deductions

In the first brief of the Commission on this hearing tables are presented which indicate the actual results stipulated (Table I) and other tables showing the points of difference between the claims of the Commission and the findings of the special master. (Tables entitled "Comparison of Results" and "Acceptable Results,"

which the Commission says it "may concede for the purposes of this case.") These tables are shown in the footnote[6] and will be utilized as a basis for our discussion of the points in dispute and for our decision thereon.

The final reply brief of the company, filed July 15, 1938, points out the particulars in which the "acceptable results" shown in the footnote are not acceptable to it, as follows: (1) gross revenue; (2) amortization of cut-over and extraordinary leakage expense; (3) allowance for general and administrative expense, fire and casualty insurance; (4) allowance for uncollectible accounts; (5) taxes; (6) amortization of retired gas plants. We have already considered all items thus mentioned except items (3), (4), and (5). We will now consider these three points of difference.

General and Administrative Expense; Fire and Casualty Insurance.[7]

Item (3) is stated by the Commission as $702,000. The amounts expended by the company, and the amount allowed therefore by the special master is shown in Table I of the footnote. [Omitted here.] The amount shown as expended for these items for the year ending July 15, 1934, is the sum of $707,023.84 for general and administrative expense; $77,163.94 for injuries and damages; $26,872.75 for insurance, making a total of $811,060.53. The allowance of the special master for these respective items was $638,905.77, $77,520.55, and $26,862.24, a total of $743,288.56. The amount claimed by the company for the special master for these respective items was $672,472.09, $77,520,55, and $26,862.44, a total of $776,854.88. The special master disallowed $12,840.27, donations to charities; $2,147.78, legal fees, in connection with the income tax returns for 1924–1930 as not likely to be again required in 1933; $420.80 legal fee for water and power legislation as not properly chargeable to the gas department, and $1,524.91 for the expense of publishing a company magazine which had been discontinued; and $16,632.56 fees and expenses in this case; making a total disallowance of $33,566.32 from the item of $672,472.09 claimed by the company. The other two items ($77,520.55 and $26,862.44) were allowed by the special master for the full amount claimed by the company.

The items of general and administrative expense, injuries and damages, and insurance, going to make up the total of $702,000 fixed by the Com-

[6] Tables omitted.

[7] It should be stated that the items of "General and Administrative Expense," "Insurance," and estimates for "injuries and damages" are a prorate to the gas department of the total expenditures of the company for these items, such expenditures being prorated in proportion to the gross revenue received by each department and, therefore, fluctuates with the relative fluctuation of such gross revenues. It is quite clear that in separating the business of the company into two departments—gas and electric—for rate-making purposes, thus requiring each department to furnish a nonconfiscatory net return on the capital devoted to that business, that the damages and injuries of each department should be separately ascertained, and that injuries received in one department should not be paid for in whole or in part from the income of another. This question is discussed in the earlier briefs filed herein but on final hearing no serious point is made of it as the Commission's "acceptable results" clearly recognize such division.

mission, is based upon the testimony of E. F. McNaughton, and is itemized in Exhibit 4, shown below.[8]

The item for fire insurance reserve of $78,000 is conceded to be excessive for the reason that fire insurance could be procured from insurance companies, and the premium therefor would be only $50,000, of which the gas department's pro rata would be $26,862.44, the amount allowed by the special master. For injuries and damages the Commission allowed $80,000, which was accepted by the special master. The witness Thomas, for the company, fixed the amount at $115,000, and the witness Hodges fixed it at $122,908, as a proper accrual to the reserve. Both used as the basis .55 of one per cent of gross revenue as an estimate of the reserve for injuries and damages, but used different estimates of gross income, hence the difference in estimates. It was claimed that thirteen years' experience had shown that this was a proper allowance and that only $70,000 remained in the reserve applicable to the gas department. The actual charges to this reserve for the thirteen years ending December 31, 1932, was $3,357,035.70, which was .51 of one per cent of the gross operating revenue $663,081,289.46 for the same years. This relationship between gross revenue and the amount required to pay claims for injuries and damages may give a convenient method of computing the required allowance, but there is no such actual relation of cause and effect as would justify or require the acceptance of a ratio of .55 of one per cent of the gross income as a proper or necessary allowance therefor. On the other hand, the actual losses of the company because of injuries and damages for the years ending May, 31, 1931, 1932, and 1933, were respectively $87,979.48, $48,562.06, and $41,317.94, an average of $65,956.29. The item for the year ending May 31, 1934, was $77,520.55. There is no adequate reason for increasing the allowance by the Commission of $80,000.

We do not find it necessary to go into the question of contributions to charity, as the Supreme Court has held in West Ohio Gas Co. v. Ohio Pub. Utilities Commission, *supra,* that allowance of such amounts depends upon the question of whether or not the company was substantially benefited thereby, and the Commission has made the allowance, evidently upon the theory that the company was so benefited. Some of the other items disallowed by the special master were not included in the amount allowed by the Commission. The item of $702,000 allowed by the Commission should be reduced by the sum of $51,137.66 (the overestimate for fire insurance), and so reduced is fixed at $650,862.34.

Bad Debts

[19] Item (4) is an estimate of the losses which will occur in 1932–1934 by reason of uncollectible debts. The Commission allowed $138,000, which was more than the average for the preceding four years ($124,563.75) and, as it turned out, more than 1935 ($116,062.93) or 1936 ($121,206.45), but less than 1934 ($253,046.25), and less than the average for 1934 to 1936, inclusive.

[8] Table omitted.

The witnesses before the Commission based their judgment of $138,000 upon a study of the books of the company from which they estimated a loss of .59 of one per cent. We cannot say that the conclusion of the Commission was unreasonable.

Taxes

The corrections made in Exhibit 4 referred to in the stipulation have taken care of the deductions in Federal income tax and state taxes for which the Commission contends.

Summary

To summarize our conclusions on these differences, we find, (1) gross revenue for 1934 to be reasonably estimated at $20,400,000; (2) the amortization for pipe repair expense of $324,815 should be disallowed as an expense but allowed as a recognition of depreciation to be included in the depreciation annuity. The item of $657,815 for cut-over expense should be disallowed excepting as reflected in going concern value, as heretofore discussed and allowed; (3) the allowance for general and administrative expense, fire and casualty insurance, injuries and damages, at $702,000, less $51,137.66 for fire insurance being the difference between the amount allowed of $78,000 and the amount conceded to be reasonable, $26,862.44, an aggregate of $650,862.44 ($702,000 less $51,137.66) is the amount found by the Commission for this item less the correction. No point is made on review of the special master's findings concerning other items he disallowed aggregating $33,568.32, *supra*.

Amendments to Table of Acceptable Results Shown in Note 6 [Tables omitted.]

To apply this summary we turn to the table of "Acceptable Results" and add to gross income the difference between the Commission's estimate of $20,400,000, and the actual gross revenue (adjusted) of $19,794,572.81, amounting to $705,427.19. We accept the Commission's estimate of $3,780,000 for "production expense" as reasonable as against actual of $3,874,445.34 (a difference of $94,445.34, reducing expense by that amount). We also accept the Commission's estimate of $293,000 for "transmission expense," an increase over the actual ($270,012.44) of $22,987.56; for distribution expense $2,360,000 allowed by the Commission against $2,296,861.34 actual (an increase of $63,138.66); "commercial" $1,010,000, being more than actually expended ($1,006,974.47) by $3,625.53; new business allowance by the Commission $812,000, actually expended $769,843.07 (a difference of $42,156.93 in amount allowed). Uncollectible accounts as allowed by the Commission $138,000, being less than the acceptable results ($162,279.62) by $24,279.62. The net result of these changes is an increase of only $3,183.68 in the expenses above mentioned over the table of "Acceptable Results."

Taxes reëstimated we take at amount adjusted to reduced rates shown in Table I, at $2,362,029.88 [Table omitted.] Amortization of gas plants of $150,000 is disallowed. Depreciation is fixed as above. Thus modi-

fied we have the table of "Acceptable Results" for 1933–1934, as follows:

	1934 Acceptable Results As Claimed by Commission in Brief	1934 As Modified by Court
Gross revenue	$20,400,000.	$20,400,000.
Expenses of operation	$3,874,445.34	$3,780,000.00
Transmission expense	270,012.44	293,000.00
Distribution expense	2,296,861.34	2,360,000.00
Commercial	1,006,974.47	1,010,000.00
New business	769,834.07	812,000.00
General and administrative, injuries, and damages	702,000.00	650,862.34
Uncollectible accounts	162,279.62	138,000.00
Taxes	2,362,029.88	2,362,029.88
Depreciation	1,769,119.00	2,964,057.50
Extra depreciation on retired gas plants	150,000.00	.....
Total	$13,363,565.16	$14,369,949.72
Net revenue	$6,030,050.28	

Taking the fair value of the property at $90,507,359 fixed as above the rate of return for the year 1933–1934 is 6.6625 per cent.

For 1934–1935 the gross return is increased to $22,051,590.95, and for 1936 to $23,842,427.61; the expenses actual for 1934–1935 reported as $13,515,654.07, plus depreciation $2,964,057.50, gives a total of $16,479,711.57; deduct from this estimate of expense $238,092, for amortization of gas plants; $567,202, for amortization of cut over and repairs, and $281,978.95, for taxes not required at reduced rates; a total of $1,077,272.95, leaves expenses at $15,402,438.62, and net return at $6,649,152.33, a return at the rate of 7.3465 per cent on the fair value at $90,507,359.

For the year 1935–1936, gross return $23,842,427.61, operating expense $13,753,669.20, plus $2,964,057.50, depreciation gives a total $16,717,726.70; deduct from expenses for reduced taxes $257,940.70, for amortization of gas plant $238,092, for amortization of cut over and repairs $32,248.31, a total reduction of $528,281.01 gives an expense of $16,189,445.69 which, deducted from revenue, gives $7,652,981.92, which gives a net return on capital of $90,507,359, of 7.6215 per cent.[9]

[9] In these calculations we have ignored the changes in the depreciation reserve due to the annual addition of the depreciation annuity ($1,769,119) and to the interest at 6 per cent on the whole reserve. These additions for 1933–1934 amounted to $2,552,229 ($1,769,119) plus 6 per cent on $13,051,839 [$783,110.34], making the reserve at the beginning of 1934–1935 $15,604,068, to which must be added the depreciation annuity $1,769,119 plus 6 per cent on the depreciation reserve of $15,604,068, amounting to $936,244.08, a total of $2,705,363.08 giving a depreciation reserve of $18,308,431.08 for the year 1935–1936. The interest on this amount at 6 per cent is $1,098,565.86 which exceeds the amount we have used in our calculations for 1935–1936 by the difference between $1,098,565.86 and $783,110.34, *supra*, which is $315,455.52 (which represents .34853 of one per cent on the fair value of the company's property).

Assuming a straight-line depreciation which is the same from year to year as to the various items of depreciable capital, and fixing the annual depreciation for 1935–1936 for the same amount as above stated for the year 1933–1934 at $3,747,167.34 the $315,455.52 additional interest on the depreciation reserve would decrease by that amount the necessary allowance from the gross returns for annual depreciation for 1935–1936. Consequently, the net revenue should be increased by that amount which would increase the rate of return from 7.6215 per cent by the addition of .34853 per cent making a return of 7.97 plus per cent for the year 1935–1936.

[20] A good deal of attention is properly given in the briefs to the question of the rate of return which measures the limit of the rate-making power under the Constitution. The Commission found that a rate of 6⅔ per cent was nonconfiscatory. The estimated net return for the year 1933–1934 is almost exactly that amount. The special master found the fair rate of return to be 7 per cent. The Commission found the reasonable cost of money to the company throughout its recent history to be 6.10 per cent, the maximum to be 6.19 per cent. We will not extend this opinion by an elaborate presentation of the company's financial dealings over a period of twenty years. It is sufficient to say that in view of the lowered rates of interest and the difficulties of securing safe investments recent decisions have shown a tendency to approve rates of return as low as 6 per cent. Arkansas Louisiana Gas Co. v. Texarkana (1938) 96 F. (2d) 179, 188, 24 P.U.R.(N.S.) 267.

The expense for new business allowed by the Commission was $812,000. There seems no reason why the company could not economize in this item if its income had threatened to go below the point of confiscation. The company did in fact reduce the new business expense about $42,000. Certainly the company cannot claim to have the sole power over such expenditures and complain of confiscation because the revenues do not sustain such expenditure, and the allowance by the Commission of this item must be considered in the light of its other findings as to the net revenue.

We conclude that the charge of confiscation is not clearly shown by this record.

Findings of Fact

Our findings of fact are that the fair value of the company's property is $90,507,359; that its depreciation reserve in 1933–1934 was $13,051,839, should be $15,604,068 for 1934–1935 and $18,209,431.08 for the year 1935–1936; that the gross revenue for 1933–1934 was properly estimated at $20,400,000, and the expenses plus depreciation for 1933–1934 amounted to $14,369,949.72, leaving an estimated net revenue of $6,030,050.28, which is 6.6625 per cent of the fair value; that this return is reasonable and not confiscatory; that the actual gross income for 1934–1935 at the new rates was $22,051,590.95; that the expenses plus depreciation as found above ($2,964,057.50) are $15,402,438.62, giving a net return of $6,649,152.33, or 7.3465 per cent on the fair value of $90,507,359. To this amount should be added $153,113.76 interest on the amount of the increase in the depreciation reserve, giving a net return of 7.50533 per cent for the year 1934–1935.

The actual gross income for 1935–1936, estimated for the full year, at the new rates was $23,842,427.61; that the expenses plus depreciation amount to $16,189,445.69, giving a net return of $7,652,981.92 of 7.6215

Similarly, for the year 1934–1935 the difference in interest on the reserve would be $153,113.76 (that is 6 per cent on the increase of $2,552,229). This amount would increase the net return by that amount or by .15973 of one per cent, making the net return for 1934–1935 7.50538 per cent.

per cent on the fair value which is stipulated to be the same as in 1933–1934. To this return should be added $315,455.52, being 6 per cent interest on the amount of the increase in the depreciation reserve over that reserve in 1933–1934, making the net return for the year 7.97 per cent; that a rate of return of over 6.5 per cent is not confiscatory; consequently, that the order of the Commission has not resulted in confiscation of the company's property.

The foregoing summary of facts constitutes our findings of facts. Arrangements will be made for a refund under the supervision of the court.

The decree will be that the plaintiff take nothing by this action and pay its own costs, the Commission also to pay its own costs, except as otherwise agreed. The final decree will be entered at once, the court retaining jurisdiction to supervise the repayment of overcharges which have been impounded by the company in pursuance of a stipulation herein. The parties at once will submit a plan for the repayment of such amounts, unless an appeal or rehearing is sought.

SECURITIES AND EXCHANGE COMMISSION

Re Utilities Power & Light Corporation

[File Nos. 34-8, 52-3, 52-5, 52-9, 52-10, 59-1.]

Parties, § 20 — Intervention — Protective committee — Conditions — Affiliated interest.

Authority to intervene in reorganization proceedings was granted to a protective committee for several classes of security holders only on condition that a copy of the Commission opinion on the motion for intervention accompany any circulars or letters to security holders and that the committee's right as a party be limited to the exercise of such rights, and no others, as the security holders have empowered the committee to exercise on their behalf and that it be not permitted to maintain any position inconsistent with any representations made to security holders, where it appeared that all committee members were linked in some fashion with a holding company system interested in the junior securities of the company being reorganized.

[September 20, 1938.]

PETITION *to intervene in reorganization proceeding; granted subject to conditions. For later decisions, see post, pp. 35, 38.*

By the COMMISSION: Harry Reid, Max McGraw, and B. B. Robinson, representing themselves as the "General Protective Committee for Security Holders of Utilities Power & Light Corporation" (hereinafter referred to as the "committee"), have filed a sworn petition to intervene in the above-entitled proceedings. These proceedings concern various proposed

plans of reorganization for Utilities Power & Light Corporation (a registered holding company), and also concern proceedings instituted by order of this Commission pursuant to § 11 (b) of the act. Disposition of this petition is governed by § 19 of the act and by Rule XVII of the Commission's rules of practice. In so far as pertinent, these provisions are set forth in the margin.[1]

The Atlas Corporation (which is the proponent of a plan of reorganization involved in these proceedings and which has been permitted by this Commission to intervene in all of the above-entitled proceedings) has filed objections to said petition to intervene, and the committee has filed a reply to the objections of the Atlas Corporation.

The committee purports to derive its authority to represent security holders from certain letters of authorization executed by security holders of Utilities Power & Light Corporation. These letters of authorization were solicited pursuant to Rule U-12E-3(c) promulgated by the Commission which authorizes any person to solicit authorization for the restricted purpose of representing the owners of securities or claims "in connection with the negotiation, formulation, or development of a reorganization plan, or to appear before a court, Commission, or other body in connection with such reorganization or the development of a plan," provided that no such authorization constitutes a consent to or dissent from a reorganization plan, and provided further that certain additional conditions set forth in said rule are satisfied.

It is clear from the record that the committee was organized by Howard C. Hopson, and that every member of the committee and its secretary and counsel are in some fashion linked with the Associated interests, and it is our conclusion that it was so organized on behalf of Associated Gas and Electric system. Hopson selected Harry Reid, chairman of the committee. Reid is an officer of a company in the Associated system. Reid did not select his fellow members on the committee, nor did he select the committee's secretary or its counsel. Hopson also asked McGraw to serve as a committee member, McGraw being a personal friend of Mr. Hopson and having a substantial interest in the Associated system. The record does not specifically show who selected Robinson as a committee member, but Robinson has on one occasion been employed as a lobbyist in the pay of Associated Gas and Electric Company.[2] Sears, secretary to the committee, is an officer of a company in the Associated system. Counsel to the committee, Clarence Ross, represented subsidiaries of Associated Gas and Elec-

[1] Section 19 of the act (15 USCA § 79s) provides in part: "In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, . . . may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers."

Rule XVII of the Commission's rules of practice provides: "Any person upon the proper showing of sufficient interest in the subject matter may, upon application in writing to the Commission duly made, be allowed to intervene in any proceeding upon such terms and conditions as the Commission may prescribe."

[2] Hearings before a Special Committee to Investigate Lobbying Activities, 74th Cong, 1st Sess. (1935) Part 3, at 1203, 1210–1211.

tric Company in the 77B proceedings of this debtor and, so far as the record shows, has never withdrawn as counsel to such interests.

Reid testified that Hopson suggested that the committee be organized because the Associated interests had a large investment in the debtor. Associated owns some debentures and A, B, and common stocks of the debtor, all of which are also represented by the committee which also purports to represent preferred stock. The holdings of the Associated system are through two subsidiaries. Associated Investing Corporation owns $145,000 of debentures, and 1,000 shares of class B stock. Associated Utilities Corporation owns one share of class A stock; 335,745 shares of B, and 362,809 shares of common stock.

The committee claims to have authorizations, as of August 25, 1938, for $1,986,600 of debentures; 28,300 shares of preferred; 550,774 shares of class A stock; 37,815 shares of B stock; and 504,574 shares of common. These authorizations do not include any of the securities owned by Associated. At the inception of the committee, the Associated interests gave the committee proxies for its securities, but these proxies were withdrawn in December, 1937, for the alleged purpose of enabling Associated to appear in the reorganization proceedings through separate counsel.

Associated Investing Corporation and Associated Utilities Corporation have been allowed to intervene in the 77B proceedings and in the instant proceedings before this Commission. They have participated extensively in the latter.

It appears to be beyond question that the committee is the instrument of the Associated interests. On the basis of the facts before us, there is every reason to suppose that its policies and activities will be dominated by the wishes of Associated, and that it will not provide security holders with independent representation. In addition, it clearly appears that any committee which acts for all classes of security holders in this reorganization is representing conflicting interests. For example, forceful representation of common stockholders in this situation must of necessity involve a challenge to the position of debenture holders and, perhaps, or preferred stockholders.

On the other hand, as we have stated above, the committee claims to have substantial authorization from security holders, empowering it to appear before this Commission in these proceedings; and in the committee's letter of solicitation it recited that "all of the members of the committee have been asked to serve thereon by interests friendly to the Associated Investing Corporation and Associated Utilities Corporation."

This Commission is exceedingly solicitous that these proceedings be so conducted as to assure that all points of view receive as full consideration as is reasonably possible. Consequently, we have determined to grant the committee's petition to intervene, subject to certain conditions hereinafter stated. So far as the circumstances may require, however, we shall take into account the facts concerning the committee's connection with the Associated interests and its representation of conflicting classes of securities of the debtor in determin-

ing the weight to be given to evidence adduced by it and to the positions which it seeks to support.

The committee will be allowed to intervene subject to the conditions that a copy of this opinion shall accompany any circulars or letters to security holders transmitted after the date hereof; and that the committee's rights as a party will be limited to the exercise of such rights, and no others, as the security holders have empowered the committee to exercise on their behalf and that it will not be permitted to maintain any position inconsistent with any representations which it has made to security holders.

Our decision to permit this intervention must not be taken as an indication of our views with respect to the committee's qualifications to act for security holders under any of our rules and regulations other than Rule U-12E-3(c), or otherwise, or to indicate any opinion of this Commission with respect to the allowance of fees or expenses out of the estate to this committee.

ORDER

Harry Reid, Max McGraw, and B. B. Robinson, representing themselves as the "General Protective Committee for Security Holders of Utilities Power & Light Corporation" having heretofore filed a petition to intervene in the above-entitled proceedings; and

The Commission having on September 16, 1938, entered an order granting such petition subject to certain conditions contained in said order, and having on the same day entered its memorandum opinion in this matter; and

Counsel to said committee having on September 19, 1938, moved that the Commission grant a rehearing with respect to said memorandum opinion; and

A rehearing on said matter having been granted and held on September 19, 1938:

It is *ordered* that said memorandum opinion be amended in the following respects:

1. There shall be stricken from the fourth paragraph of said memorandum opinion the sentence reading as follows: "It is clear from the record that the committee was organized by Howard C. Hopson, on behalf of Associated Gas and Electric Company system, and that every member of the committee and its secretary and counsel are in some fashion linked with the Associated interests"; and there shall be substituted in lieu thereof the following: "It is clear from the record that the committee was organized by Howard C. Hopson, and that every member of the committee and its secretary and counsel are in some fashion linked with the Associated interests, and it is our conclusion that it was so organized on behalf of Associated Gas and Electric Company system."

2. There shall be stricken from the fifth paragraph of said memorandum opinion the sentence reading as follows: "Associated owns some securities of each class which the committee claims to represent—which includes every class of security which the debtor has outstanding"; and there shall be substituted in lieu thereof the following: "Associated owns some debentures and A, B, and common

stocks of the debtor, all of which are also represented by the committee which also purports to represent preferred stock";

It is *further ordered* that the aforesaid order and memorandum opinion of the Commission stand as the order and the opinion of the Commission in this matter, with the changes to said memorandum opinion noted above.

Order Allowing Petition to Intervene

Harry Reid, Max McGraw, and B. B. Robinson, constituting a General Protective Committee for Security Holders of Utilities Power & Light Corporation, by counsel, Clarence H. Ross, having filed on August 29, 1938, a petition to intervene in the above-entitled proceedings;

It is hereby *ordered* that the petition of said Harry Reid, Max McGraw, and B. B. Robinson, constituting a General Protective Committee for Security Holders of Utilities Power & Light Corporation, to be made parties to said proceedings be granted, subject to all proceedings heretofore taken therein, *provided that* said committee shall restrict its activities in said proceedings to the purpose in respect of which it is authorized to act for the security holders whom it represents, and *provided further that* said committee shall not take any action or seek to maintain any position inconsistent with its representations to security holders or the terms of its authorizations, and *provided further that* a copy of the Commission's memorandum opinion in respect of this petition to intervene shall accompany any letters or circulars transmitted to security holders after the date hereof.

SECURITIES AND EXCHANGE COMMISSION

Re Utilities Power & Light Corporation

[File Nos. 34-8, 52-3, 52-5, 52-9, 52-10, 59-1.]

Parties, § 18 — Intervention — Powers of Commission.

1. The Commission has authority to impose any reasonable condition on the intervention of a party in any proceeding before it, p. 36.

Corporations, § 10 — Jurisdiction and powers — Reorganization proceeding.

2. The sole matter before the Securities and Exchange Commission in a reorganization proceeding under § 77B of the Bankruptcy Act is the question of what kind of reorganization plan will meet the requirements of the law; and the propriety of the § 77B proceedings is a matter for the court, not for the Commission, p. 37.

[October 20, 1938.]

HEARING *on objections to orders relating to intervention in reorganization proceedings; objections overruled. For earlier decision, see ante, p. 31, and for later decision in the same case, see post, p. 38.*

By the COMMISSION: Associated Investing Corporation and Associated Utilities Corporation, intervenors herein, have filed objections to the memorandum opinion, as amended, and the orders of this Commission entered in these matters on September 16 and 20, 1938. The orders granted the petition of Harry Reid, Max McGraw, and B. B. Robinson, representing themselves as the "General Protective Committee for Security Holders of Utilities Power & Light Corporation," to intervene in the above-entitled proceedings subject to certain conditions. The facts with reference to the petition need not be stated in full, as they are set out in the previous orders and opinion.[1]

The Commission has heard the intervenors on their objections.

[1] The intervenors took the position that the Commission does not have the power to require that copies of the opinion be transmitted to security holders to whom the General Protective Committee shall send circulars or letters. The Commission has authority under Rule XVII of its Rules of Practice to impose any reasonable condition on the intervention of a party in any proceeding before it. The fact that the Commission has specific authority under § 11(g) of the act to protect the interests of investors solicited by a committee is persuasive that conditions adapted to that end are reasonable conditions on intervention.

The security holders have at no time been adequately informed of the extent of the conflict involved in this proceeding among the interests represented by the committee. In distributing the assets of a corporation in 77B proceedings, the interests of senior security holders are usually opposed to those of the holders of junior securities. The satisfaction of the obligations of one class may require the reduction or elimination of the interest of another class. In the present proceeding, to be specific, the trial examiner is receiving evidence in order to determine what equity, if any, there is for the debtor's securities junior to the debentures. Any participation in such a proceeding necessitates supporting the claims of one group of securities against the claims of another. Sending copies of the opinion to security holders will protect their interests by apprising them of the extent and significance of the conflict in the interests purported to be served by the committee.

Furthermore, in the circulars thus far distributed, the committee has failed to make clear the details of its relationship with the Associated system. In its first letters, no reference was made to the Associated system. In later letters it was stated that its members were invited to serve by interests friendly to the Associated system, but this is far from disclosing that two of the three committee members were in fact chosen by Hopson. This is important, since the Associated system is primarily interested in the junior securities of Utilities Power & Light Corporation.[2] A security holder upon being solicited by a general protective committee natural-

[1] Re Utilities Power & Light Corp. (S. E. C. 1938) 26 P.U.R.(N.S.) 31, *ante*.

[2] At the time authorizations were solicited from the security holders by the Protective Committee, Associated also held some of the debentures. In its literature the committee disclosed the Associated holdings and obligated itself to report changes therein. Although

ly assumes that the committee intends to operate to protect the interests of all classes of securities generally. A full disclosure of the relations between this committee and the Associated system is necessary in order to protect persons who are solicited in order that they may form a judgment as to whether the committee is in fact one of the principal contestants already represented in the proceeding, rather than their own representative.

[2] It was argued to us that the purpose of the committee is to protect all classes of security holders by attacking the necessity of 77B proceedings at all, and that the committee is therefore able to serve and represent conflicting interests successfully. The propriety of the 77B proceedings is a matter for the court, not for us. The sole matter before us is the question of what kind of reorganization plan will meet the requirements of the law. As indicated above, it is difficult to see how this can be done without a conflict among the interests represented by the committee.

We have considered the other grounds of objection raised by the intervenors and find them without merit.

An order will issue overruling the objections of the intervenors.

Order

Whereas the Commission on September 16, 1938, and September 20, 1938, entered certain orders and an opinion in the above-entitled matters; and

Whereas the Commission has given additional consideration to the aforesaid orders and opinion;

It is *ordered,* that the aforesaid order of the Commission dated September 16, 1938, be amended by striking the last clause therein, reading:
"and *provided further that* a copy of the Commission's memorandum opinion in respect of this petition to intervene shall accompany any letters or circulars transmitted to security holders after the date hereof."
and inserting in lieu thereof the following:
"and *provided further that* a copy of the Commission's memorandum opinion in respect of this petition to intervene shall be sent to each security holder when next circularized or communicated with after the date of this order."

It is *further ordered,* that the memorandum opinion entered on September 16, 1938, as amended on September 20, 1938, be further amended by striking out the eleventh paragraph and inserting in lieu thereof the following:
"The committee will be allowed to intervene subject to the conditions that a copy of this opinion shall be sent to each security holder when next circularized or communicated with after the date hereof; and that the committee's rights as a party will be limited to the exercise of such rights, and no others, as the security holders have empowered the committee to exercise on their behalf and that it will not be permitted to maintain any posi-

the security holders have not yet been informed, Associated has sold practically all of the debentures and now holds principally junior securities. Assuming that disclosure of this fact will be made in due course, an unfair burden is placed on those who have given authorizations to the committee to appraise the significance of the change in the Associated holdings and to take affirmative action.

tion inconsistent with any representations which it has made to security holders."

It is *further ordered,* that the aforesaid orders and opinions of the Commission stand in all other respects as the orders and opinions of the Commission in these matters.

SECURITIES AND EXCHANGE COMMISSION

Re Utilities Power & Light Corporation

[File Nos. 34-8, 52-3, 52-5, 52-9, 52-10, 59-1.]

Parties, § 20 — Intervention — Hearing without formal intervention.

A protective committee for security holders which has been granted authority to intervene in reorganization proceedings, subject to certain conditions intended to inform security holders represented as to its formation and interest, should be denied the right to be heard throughout such proceedings without actual intervention.

[November 2, 1938.]

PETITION *by protective committee for security holders to be heard in reorganization proceedings; petition denied. For earlier decisions in the same case, see ante, pp. 31, 35.*

By the COMMISSION: There is before us a petition by Harry Reid, Max McGraw, and B. B. Robinson, representing themselves as the "General Protective Committee for Security Holders of Utilities Power & Light Corporation" (hereinafter referred to as the "committee"), to be heard throughout the above-entitled proceedings. These proceedings, brought under the Public Utility Holding Company Act of 1935, concern various proposed plans of reorganization for Utilities Power & Light Corporation, a registered holding company, and also include a proceeding instituted by order of this Commission pursuant to § 11(b) of the act. The Commission has heretofore entered orders and opinions granting the committee the right to intervene subject to certain conditions.[1] The principal condition is that a copy of the Commission's opinion discussing the relationship of the committee to the Associated interests be sent to each security holder when next circularized or communicated with by the committee. Objections of the committee to the conditions attached to its intervention have been considered by the Commission and overruled.[2]

The present petition of the committee requests that, in the event the Commission overrules the committee's objections to the orders and opinions

[1] Re Utilities Power & Light Corp. (S. E. C. 1938) 26 P.U.R.(N.S.) 31, 35, *ante.*

[2] Re Utilities Power & Light Corp. (S. E. C. 1938) 26 P.U.R.(N.S.) 31, *ante.*

granting intervention, the committee be granted the right to be heard in all these proceedings as distinguished from intervening therein.

On questioning by the Commission in the course of the oral argument, counsel for the committee failed to distinguish a right to be heard from intervention, and he further failed to explain precisely what privileges were desired in the proceedings. The act nowhere mentions, as does the bankruptcy legislation,[3] the right to be heard. On the contrary, the act states broadly that "In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, . . . may admit as a party any representatives of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers." [4]

Although neither the act nor our rules make specific provision for the appearance of persons other than parties, it may well be that we have power to permit others to participate in a limited manner and that such limited participation may be of great assistance to us and to those whom they represent. If a person does not have sufficient interest to be permitted to intervene, or does not desire to do so, then certainly the permission to participate must be wholly in our discretion [5] and subject to reasonable restriction. If we granted the petition before us, however, we would in effect vitiate our previous orders on the petition to intervene. Whatever status is given to the committee in this proceeding, it should not be permitted to represent security holders who have not been adequately informed as to its formation and interests.

If the petititon to be heard had been filed in the absence of a prior petition to intervene, we might well have granted it on the very conditions which we have in fact imposed on the right of the committee to intervene. But having granted the greater right, it would seem futile to grant the lesser right to be heard on the same conditions, particularly since the committee has been unwilling to waive any rights it may have as a result of our previous orders.

An order denying the petition of the committee for leave to be heard in

[3] Section 77(c)(13) of Chap. VIII of the Bankruptcy Act (11 USCA § 205) provides in part: "The debtor, any creditor, or stockholder, or the duly authorized committee, attorney, or agent of either or the trustee or trustees of any mortgage, deed of trust, or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, upon petition therefor and cause shown, any such person or any other interested party may be permitted to intervene."

Sections 206 and 207 of Chap. X of the Bankruptcy Act (11 USCA §§ 606, 607) provide in part: "The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. . . ."

"The judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter. . . ."

The corresponding provision in § 77B(c)(11) was: "Any creditor or stockholder shall have the right to be heard on the question of the permanent appointment of any trustee or trustees, and on the proposed confirmation of any reorganization plan, and upon filing a petition for leave to intervene, on such other questions arising in the proceeding as the judge shall determine." (11 USCA § 207(c)(11).)

[4] Section 19 (15 USCA § 79s).

[5] Cf. Public Service Commission v. Philadelphia Rapid Transit Co. (1936) 82 F. (2d) 481, certiorari denied (1936) 298 U. S. 673, 80 L. ed. 1395, 56 S. Ct. 938.

these proceedings will issue in conformity with this opinion.

ORDER

Harry Reid, Max McGraw, and B. B. Robinson, representing themselves as the General Protective Committee for Security Holders of Utilities Power & Light Corporation, having on October 4, 1938, filed a petition to be heard in the above-entitled proceedings; and

This Commission having heard said committee on its petition, having duly considered the matter and being fully informed in the premises;

It is *ordered*, that the petition of said Harry Reid, Max McGraw, and B. B. Robinson, representing themselves as the General Protective Committee for Security Holders of Utilities Power & Light Corporation to be heard in the above-entitled proceedings be and hereby is denied.

MICHIGAN PUBLIC UTILITIES COMMISSION

Re Allen Dean, Manager, Transportation Bureau of Detroit Board of Commerce

[D-3022.]

Records, § 1 — Inspection of Commission file — Information filed by carriers.

An application for inspection of motor carrier financial reports filed under rules and regulations relating to application for operating authority should be denied until it has been judicially determined that such inspection would be lawful, since the matter contained in these reports is the same as the confidential information which the Commission may obtain under § 11, Art. V, of Act 254.

[October 18, 1938.]

APPLICATION *for inspection of motor carrier financial reports; denied.*

By the COMMISSION: In this matter the Commission has received the request of Mr. Allen Dean in the capacity above indicated, asking the Commission to supply to him certain financial information concerning the operations of several enumerated motor carriers subject to the Commission's jurisdiction, comprising information obtained by the Commission from quarterly reports as filed by carriers under Rule 14 of the Motor Carrier Rules and Regulations established pursuant to Act 254, Public Acts of 1933, which Rule 14 reads as follows:

"Operating Reports. Every common and contract carrier shall file a quarterly report with the Commission, which shall be filed within thirty days

after the end of each quarter, and the end of quarters are designated as follows: The last day of March, June, September, and December. Such reports shall show the following information:

(a) The condition of each vehicle operated for the carrying of passengers or freight.

(b) A statement showing carrier's operating revenues and expenses during the preceding quarter; such revenues to be divided as between passenger, freight, and other revenue; operating expenses to be divided as to salaries to officers, wages of employees, gasoline, lubricants, repairs for cars, rent, rent for equipment, insurance, taxes and automobile licenses, interest, injuries and damages, miscellaneous depreciation, approximate tons or passengers carried.

(c) General financial statement showing assets and liabilities.

(d) Claims pending, if any, with short statement of amount involved and character of claim.

The said rule was adopted pursuant to the specific power as conferred in said act upon the Commission to require the filing by carriers of annual or other reports of their operations for the Commission's regulatory use. Many of the carriers concerned in Mr. Dean's request have filed reports under the rule, and the Commission would be inclined to consider said reports a part of the Commission's files pertaining to the application for and the certificate or permit of the reporting motor carriers, which files are made public under the terms of said act and available during office hours of the Commission for inspection by any person. The said reports as indicated in the blank form hereto attached and marked "Exhibit 1" contain general or aggregate figures concerning the results of carriers' operations for quarter yearly periods, without giving the details of specific business transactions thus aggregated. However, these reports summarize much, if not all of the information which the Commission under § 11, Art. V, of said Act 254 is authorized to secure by an examination of carriers' records, all of which information secured by the Commission in this manner is made confidential, and the Commission is prohibited from divulging or making the same known in any manner whatsoever not provided by law and except for the purpose of carrying out the provisions of the act, it being the expressed legislative intent of said act to permit the use of such information by the Commission but to prevent its publication in any manner whatsoever, except when lawfully presented in open hearings either before the Commission or some member thereof, or before a court of law.

On the other hand, the said reports are not required by the Commission pursuant to the said § 11, Art. V, but rather are required under other sections of the act relating specifically to carriers' reports, including § 10 of Art. II, and § 6 of Art. III thereof. For this reason and the fact that specific business transactions between the carriers and their various patrons are not disclosed in detail by the said reports, and also for the reason that aggregated operating figures including revenues, profits, and losses are of interest to shippers in the presentation of their cases before the Commission af-

fecting carriers' rates, the Commission would be inclined to believe that the publication of said reports is not a violation of the requirements of said § 11 prohibiting the disclosure of information secured thereunder.

But the scope of § 11 has not been judicially determined by the court of last resort of this state, from which an authoritative interpretation can be secured. For this reason, until such interpretation is secured, the Commission does not feel warranted in complying with Mr. Dean's request.

In reaching the foregoing conclusion the Commission does not contest the interest of Mr. Dean and the Detroit Board of Commerce in the general subject matter of carriers' rates and their right to secure all proper information from this Commission bearing thereon, both for their own use and that of the various shippers represented by them.

Therefore, it is *ordered* by the Commission, upon all the foregoing considerations, that Mr. Dean's said request be now denied.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Latrobe Water Company

[Application Docket No. 52107.]

Intercorporate relations, § 19 — Intercompany loans — Depleted working capital — Dividend and interest payments.

A public utility company should not be authorized to borrow from its parent company to make plant additions and improvements and to replenish its working capital, when the poor current position of the subsidiary is the result of payments to the parent company of dividends and of interest at a high rate.

[October 3, 1938.]

APPLICATION *for approval of borrowing from affiliated corporation; application refused.*

By the COMMISSION: Latrobe Water Company (hereinafter referred to as "petitioner") is a public utility engaged in the collection and distribution of water in Westmoreland county. All its capital stock, $250,000 par value of common, is owned by Northeastern Water & Electric Corporation (hereinafter referred to as the Northeastern Company), a holding company in the Associated Gas & Electric System of companies.

Petitioner here seeks our approval of the borrowing of $62,000 of money from the Northeastern Company, the money to be borrowed from time to time as needed, and each loan to be evidenced by a one-year 6 per cent note payable of petitioner. Of the total loans of $62,000, $45,000 thereof would be

used for the making of plant additions and improvements, and the remaining $17,000 would be used to replenish petitioner's working capital, which is averred to have been depleted through the making of $27,842.52 of plant additions and improvements in the year 1937. The net assets of petitioner (current assets less current liabilities), exclusive of a note payable for $600,000 to the Northeastern Company) are averred to be only $2,-253.77.

Because of this unfavorable current position, it is averred no attempt was made to negotiate loans from local banks. Another reason for not attempting to borrow locally is alleged to be that a bank would not lend money to petitioner at this time because petitioner has outstanding a demand note payable to the Northeastern Company in the amount of $600,000, on which petitioner allegedly is unable to pay the current interest. A further reason is said to be that local loans probably would be on only a 30- or 60-day basis, and the lender, for various reasons, might call upon petitioner to liquidate the loans, which petitioner would be unable to do, whereas by borrowing from its parent, petitioner would be in a better position to defer repayment of the loan.

All this is plausible enough on its face, but a little inquiry into petitioner's recent corporate and financial history throws a different light on the matter.

The Northeastern Company acquired control of petitioner on or about August 15, 1934. Previously thereto another unrelated holding company, Keystone Water Works Corporation (hereinafter referred to as the Keystone Company), had acquired control of petitioner in the year 1927. Control later passed through several hands, and finally lodged in the Northeastern Company.

When the Keystone Company acquired control of petitioner in the year 1927, petitioner had outstanding $250,000 par value of common capital stock, $170,000 par value of 8 per cent preferred stock, and $599,000 principal amount of 6 per cent bonds. The Keystone Company acquired ownership of all said stock and bonds; caused the retirement of the preferred stock and bonds, totaling $769,000 par and face value; and in lieu thereof caused petitioner to issue to it 7 per cent demand notes payable in the total amount of $769,000. In this way petitioner's annual preferred-dividend and interest burden of $49,540 was increased to an interest burden of $53,-830—an increase of $4,290. But the effective increase in interest burden was more than that, for interest on the $769,000 of notes was paid monthly, whereas dividends on the preferred stock were payable only quarterly and interest on the bonds was payable only semiannually.

When the Northeastern Company acquired control of petitioner on or about August 15, 1934, it also acquired ownership of petitioner's outstanding 7 per cent notes payable, which had by then been reduced to $618,500 through net payments of $150,500 on account of principal. The Northeastern Company then caused the outstanding notes to be consolidated into one demand note dated August 15, 1934, for $618,500, interest at 7 per cent payable monthly. Subsequent payments on account of

principal reduced the amount of the note to an even $600,000. Interest, however, has not been paid monthly thus far this year (1938).

The Northeastern Company disclaims any responsibility for the conversion of petitioner's preferred stock and bonds into higher-burden notes payable; it took things as it found them. But it is significant that the Northeastern Company has taken no steps to correct the situation. It has not reduced the interest on the notes to a rate consistent with current economic conditions; it has not foregone collection of interest monthly, except for the year 1938 thus far; it has not attempted, in the present favorable money market, to fund petitioner's $600,000 of 7 per cent current indebtedness into low-rate bonds. More than that, it has received dividends on petitioner's common stock at the rates of 17.5 per cent, 8 per cent, and 7.8 per cent for the years 1935, 1936, and 1937, respectively. Of petitioner's adjusted gross income of $293,731.87 for the years 1934 to 1937, both inclusive, $291,056.45 went for the payment of interest and dividends, leaving a balance of only $2,675.42. We need not, therefore, be surprised at petitioner's poor current position.

We cannot approve this application, for to do so would encourage continuance of the practices of which we have complained. Let petitioner put its financial house in order, and it will have working capital available without recourse to current borrowing; but if even then it is necessary to borrow, local lenders of money will be more responsive because of petitioner's improved financial condition. Petitioner's service to the public need not in the meantime be impaired if petitioner will do what in common justice it ought to do—withhold payments of interest and dividends to the Northeastern Company until an adequate amount of its dissipated working capital shall have been recouped. Until such recoupment shall have been effected in an adequate amount, the additional small working capital required ought to be obtainable, on reasonable terms, from local bankers.

The question, raised by petitioner at the hearing, of the constitutionality of § 702 of Art. VII of the Public Utility Law, under which the application was filed, need not now be considered since the recently enacted amendments to that law have removed the alleged infirmity in § 702.

The matters and things involved in the application before us having been duly submitted and heard, and full consideration thereof having been had, we find and determine that approval thereof would be prejudicial to the public interest; therefore,

Now, to wit, October 3, 1938, it is *ordered*: That approval of the borrowing by Latrobe Water Company of $62,000 from Northeastern Water & Electric Corporation, an affiliated interest, be and is hereby refused.

MICHIGAN PUBLIC UTILITIES COMMISSION

Re Michigan Consolidated Gas Company

[D-3196.]

Consolidation, merger, and sale, § 38 — Effect of pending rate dispute — Commission regulation.

1. Consolidation of a gas company with subsidiaries and consequent extension of the company's activities to statewide scope would have no bearing whatever upon the Commission's authority, or lack of authority, to regulate the utility in a city where the Commission has assumed jurisdiction in a case which has been appealed to the supreme court, whose decision has not yet been rendered; hence approval of the consolidation should not be withheld pending the outcome of the judicial proceedings, p. 46.

Security issues, § 129 — Delay on application — Detrimental effect — Fluctuating money markets.

2. The Commission should not interpose unnecessary delays in a proceeding on application for authority to issue securities, in view of fluctuating money prices which may prevent the utility company from successfully marketing its securities, p. 47.

[September 15, 1938.]

APPLICATION *for authority to issue securities for the purpose of acquiring public utility assets and for authority to assume outstanding indebtedness of companies to be acquired; application granted.*

By the COMMISSION: In this matter application was filed with this Commission on September 1, 1938, by Michigan Consolidated Gas Company (formerly named the Detroit City Gas Company) hereinafter designated as applicant, for authority to issue the amount of $9,610,300 par value of applicant's common stock, for the purpose of acquiring the oustanding capital stocks of each of the Grand Rapids Gas Light Company, the Muskegon Gas Company, and the Washtenaw Gas Company, hereinafter sometimes designated subsidiaries, and thereafter upon liquidation of said subsidiaries, for authority to assume certain of the outstanding obligations and bonded indebtedness of said subsidiaries; and also for authority to issue $34,000,000 par value amount of first mortgage bonds, 4 per cent series, due 1963, and $8,000,000 par value amount of 4 per cent serial notes, due 1939/1948; also for authority to use the proceeds from the sale of said bonds and notes to discharge certain outstanding securities of the applicant and certain of said subsidiaries.

Upon the filing of application date for hearing thereon was fixed to be held on September 12, 1938, and no-

tice thereof was given by this Commission to all municipalities interested in the matter so far as known to the Commission, and all parties generally who might be interested in the matter were invited to be heard in connection therewith. Upon said hearing the Commission heard the proofs and allegations of applicant in support of said application, also the representations of the city of Detroit, and of Duncan C. McCrea, prosecuting attorney of Wayne county, Michigan, for himself and a large number of Wayne county customers of the applicant, to all of which the Commission gave due consideration.

The representatives of the city of Detroit directed the Commission's attention particularly to the review now pending in the Michigan supreme court from the order of this Commission dated May 20, 1938, in File D–3109 (24 P.U.R.(N.S.) 225) pursuant to the application of the said Duncan C. McCrea, and others, in which order this Commission had assumed jurisdiction to regulate the rates and practices of said applicant, then known as the Detroit City Gas Company, to the exclusion of the said city of Detroit under the latter's arrangements on the subject contained in the so-called Detroit Plan as provided in the decree dated December 23, 1935, of the Wayne circuit court, state of Michigan, in chancery cause File 239461. This review not having been decided as yet, the Detroit city council requested postponement of action by this Commission upon the present application pending the supreme court decision, so that the city interests involved in the review might not be prejudiced by Commission's present action. And the city of Detroit likewise represented to the Commission that the consolidation of the utility properties of applicant with those of said three subsidiaries so as to constitute a statewide utility operating in diverse communities under varying conditions might impose upon the city of Detroit the burdens from unprofitable operations elsewhere and thus prejudice consumers within the city of Detroit.

Mr. McCrea did not oppose the gas company's application but did request that any order to be made upon the application should include suitable provisions in favor of applicant's consumers in the Detroit area, protecting the same against possible burdens from less favorable operations of the utility in the particular communities of said subsidiaries.

[1] The Commission has given careful consideration to claims and position of the city of Detroit as involved in the supreme court review and is of the opinion that the consolidation of applicant with said subsidiaries, and consequent extension of applicant's activities to statewide scope, will have no bearing whatever upon the Commission's authority, or lack of authority, to regulate the utility in the city of Detroit. Section 11009 of the Comp. Laws of 1929, as amended, conferring jurisdiction upon this Commission to control and regulate public utilities within this state producing, transmitting, delivering, and furnishing gas for heating or lighting purposes for public use, expressly denies power to this Commission over rates and charges of such utilities where the same are fixed or regulated in particular cities, villages,

or townships by franchise or agreement granted or made by the proper authorities of any such municipality. And this Commission has always held that the exclusion of its power over rates so municipally regulated, is universally applicable, without regard to the statewide extent of particular utilities, or the general jurisdiction of the Commission otherwise over the same. In other words, if the supreme court holds that the so-called Detroit Plan is an effective agreement between applicant and the city of Detroit regulating applicant's rates in that city, this Commission will be just as effectively excluded from its power to regulate the same rates, all without regard as to whether applicant consolidates with said subsidiaries or remains local to the city of Detroit.

[2] Even though the Commission considers the foregoing construction of its powers as definitely settled, it would under ordinary circumstances be inclined to grant postponement, had it not been for the experience of applicant in missing a favorable bond market when refinancing was attempted early in the year 1937. Fluctuating money prices at that time disabled applicant from catching a favorable market for refunding then outstanding issues, with the result that higher interest rates have since been paid, to the detriment of company and customers alike. With such uncertainties always facing a successful refinancing program, this Commission should not interpose unnecessary delays, and for this reason it is deemed best to deny postponement of this order in the assurance which the Commission feels that no substantial right of the city is thereby jeopardized.

With respect to the other representations and requests for protective provisions in the Commission's present order insuring the city of Detroit, and other municipalities as well, from possible burdens in any one community from unprofitable operations of the utility in other communities, suitable provision has been included herein as seems appropriate to guard against such contingencies.

Proceeding, therefore, to the merits of the application, and upon consideration of the records, files, and reports of applicant on file with this Commission, and upon consideration of the testimony taken on the hearing on said application, this Commission finds and holds:

(a) By order of this Commission of February 15, 1937, the applicant, then the Detroit City Gas Company, was granted authority to issue and sell $31,000,000 principal amount of first mortgage bonds, 4 per cent series, due 1957, and $5,000,000 principal amount of 4 per cent serial notes, due 1938/1947, the proceeds thereof to be used for refunding outstanding series "A" and series "B" bonds issued by applicant under its first mortgage of July 1, 1922, and for the cancellation and discharge of $2,500,000 series "C" bonds issued under said mortgage and pledged as security for certain promissory notes then outstanding, the balance of the proceeds, if any, to be used for other lawful corporate purposes as specified in said order.

(b) An application was subsequently filed on June 14, 1937, by applicant as Detroit City Gas Company, stating that it had not issued and sold, and did not at that time desire to is-

sue and sell the said $31,000,000 principal amount first mortgage bonds 4 per cent series and the $5,000,000 principal amount 4 per cent serial notes, and had not executed and delivered the indenture of mortgage securing said bonds and the supplemental indenture defining the terms and conditions thereof, nor the indenture defining the terms and conditions of the 4 per cent serial notes, and had not retired any of the bonds outstanding under its first mortgage of July 1, 1922. In pursuance of said application of June 14, 1937, this Commission on June 24, 1937, issued an order authorizing the said applicant, as Detroit City Gas Company, among other things, to issue certain unsecured promissory notes in the aggregate amount of $1,000,000 and certain secured promissory notes in the aggregate amount of $4,000,000, from the proceeds of which to retire the promissory notes then outstanding, and to pledge $2,500,000 principal amount of the first mortgage bonds of applicant, series "C" 4½ per cent, due 1965, at that time authorized and issued, as security for the secured notes; also to issue $1,500,000 principal amount of additional first mortgage bonds, series "C" 4½ per cent under its first mortgage of July 1, 1922, and to pledge the same under the conditions specified in said order as additional security for said secured promissory notes. Said additional Series "C" 4½ per cent bonds were duly issued and authenticated December 14, 1937, and pledged as security for said notes. By said order of June 24, 1937, the Commission further provided that its order of February 15, 1937, should be modified to provide that if and when the bonds and notes authorized in said order of February 15, 1937, should be issued, a sufficient amount of the proceeds thereof should be used to effect the payment and discharge of any balance then due upon the $1,000,000 unsecured promissory notes and the $4,000,000 secured promissory notes authorized by said order of June 24, 1937, with the interest thereon, and that the petitioner should thereupon discharge and cancel the $2,500,000 series "C" 4½ per cent bonds and such portion of the $1,500,000 additional series "C" 4½ per cent bonds, authorized as aforesaid, as may have been issued and pledged as security for the said secured notes.

(c) From the present application it appears that applicant has issued the $4,000,000 secured promissory notes and the $1,000,000 unsecured promissory notes, has issued the additional series "C" 4½ per cent bonds in the amount of $1,500,000, and has pledged all of said Series "C" bonds totaling $4,000,000 as security for said secured promissory notes, all in accordance with the provisions of the order of June 24, 1937. All of said secured promissory notes, and unsecured promissory notes in the amount of $500,000 are now outstanding. Applicant has not issued and sold the said $31,000,000 principal amount of first mortgage bonds 4 per cent series, and the $5,000,000 principal amount 4 per cent serial notes, authorized by the order of February 15, 1937, nor has it retired any of the bonds outstanding under its first mortgage of July 1, 1922.

(d) Applicant now asks that it be authorized to issue $9,610,300 addi-

tional common stock for the purpose of acquiring all the outstanding shares of capital stock of the Grand Rapids Gas Light Company, the Muskegon Gas Company, and the Washtenaw Gas Company, subsidiaries of the American Light and Traction Company (which owns all of the capital stock of said companies, except directors' qualifying shares, which it will acquire). Upon acquisition of said stock, applicant proposes to effect a liquidation in kind of the assets of said subsidiaries, making appropriate provisions for the payment of the outstanding indebtedness thereof by assuming such indebtedness.

(e) The American Light and Traction Company has offered as a part of the plan for the sale of the capital stock of said subsidiary companies and the liquidation of the assets thereof, to surrender by way of donation to the paid-in surplus of said subsidiary companies certain notes and obligations owing by said companies, which American Light and Traction Company now holds as follows:

To the Washtenaw Gas Company:

$565,000 First mortgage 5 per cent bonds of said company
$100,000 Advances on open account.

To the Muskegon Gas Company:

$2,130,000 Notes payable.

To the Grand Rapids Gas Light Company:

$1,501,340.03 Notes payable
530,000.00 Advances on open account
42,000.00 First mortgage 5% bonds of said company.

After said donations have been made there will be outstanding 5 per cent first mortgage bonds of the Grand Rapids Gas Light Company due August 1, 1939, in the amount of $2,223,000 issued under its mortgage of August 1, 1914, and first mortgage bonds 5 per cent series of the Washtenaw Gas Company issued under its mortgage of December 15, 1932, in the amount of $555,000.

(f) By said plan it is further proposed that, upon receipt of such donations each of said subsidiary companies will adjust the book value of its assets by eliminating certain amounts recorded thereon. Said adjustments involve the retirement of all coal gas production property, the reversal of all appreciation in fixed capital arising from appraisals recorded in prior years and the reducing of fixed capital to a basis estimated to represent substantially the original cost. The adjustments so to be made result in a reduction of fixed capital accounts of said companies in amounts totaling approximately $2,000,000.

(g) Applicant further asks authority of the Commission to issue and sell $34,000,000 principal amount of its first mortgage bonds 4 per cent series, due 1963, said bonds to be secured by an indenture of mortgage and deed of trust dated as of September 1, 1938, to be executed by the Michigan Consolidated Gas Company to the City Bank Farmers Trust Company and Ralph E. Morton, trustees, and to be issued under the terms and conditions provided in said mortgage and in the supplemental indenture to be dated as of September 1, 1938, to be executed by the Michigan Consolidated Gas Company to said City Bank Farmers Trust Company and Ralph E. Morton, as trustees. Applicant also seeks authority of the Commission to issue and sell $8,000,000 principal

amount of unsecured 4 per cent serial notes, due 1939/1948, said notes to be issued under the terms and conditions of a certain indenture dated as of August 1, 1938, executed by the Michigan Consolidated Gas Company to Chemical Bank & Trust Company, trustee.

(h) All of the 5 per cent first mortgage bonds of the Grand Rapids Gas Light Company outstanding in the amount of $2,223,000 are due August 1, 1939, and all of the first mortgage bonds 5 per cent series of the Washtenaw Gas Company due January 1, 1953, outstanding in the amount of $555,000 are now subject to redemption at 102½ per cent of par and accrued interest under the terms of the mortgage indenture which created them; all of the said series "A" and "B" bonds of the Detroit City Gas Company issued under its mortgage of July 1, 1922, in the principal amount of $31,000,000 are now subject to redemption at 105 per cent of par and accrued interest under the terms of the mortgage indenture which created them, and all of the said secured promissory notes outstanding in the amount of $4,000,000 issued in pursuance of this Commission's order of June 24, 1937, and the $500,000 unsecured notes issued in pursuance of the same order may be paid at any time upon three days' notice without premium. Applicant now desires to issue and sell $34,000,000 of its first mortgage 4 per cent series, due 1963, and $8,000,000 principal amount of 4 per cent serial notes due 1939/1948, for the discharge or refunding of its obligations and other lawful corporate purposes, viz:

(1) To redeem the said series "A" and "B" bonds issued under its mortgage of July 1, 1922, and procure the release and discharge of said mortgage.

(2) To effect the discharge and cancellation of its series "C" bonds in the amount of $4,000,000 issued under the mortgage of July 1, 1922, by the payment of the $4,000,000 principal amount of 4 per cent secured promissory notes of applicant, for which said series "C" bonds have been pledged as security.

(3) To pay the 5 per cent first mortgage bonds of the Grand Rapids Gas Light Company, due August 1, 1939, in the amount of $2,223,000 issued under said company's mortgage of August 1, 1914, and to procure the release and discharge of same; also to redeem the first mortgage bonds, 5 per cent series, of the Washtenaw Gas Company, due January 1, 1953, in the amount of $555,000 issued under latter's mortgage of December 15, 1932, and to procure the release and discharge of same.

(4) To pay the unsecured promissory notes of applicant in the amount of $500,000.

(5) To pay the expenses and duplicate interest to be incurred by applicant in connection with the issuance of said first mortgage bonds, 4 per cent series, due 1963, and said 4 per cent serial notes due 1939/1948.

(6) The balance, if any, to be paid into the treasury of the applicant to reimburse the company for uncapitalized capital expenditures and used for lawful corporate purposes.

(i) After due consideration of said application, the exhibits attached thereto, the testimony in said matter, and the records and files herein, it is the

opinion of the Commission that subject to the terms of this order, the acquisition by applicant of the capital stock of said Grand Rapids Gas Light Company, Muskegon Gas Company, and Washtenaw Gas Company, in pursuance of the plan hereinabove set forth, the subsequent acquisition of the assets of said subsidiary companies by liquidation and the assumption by applicant of the debts and liabilities of said subsidiaries is within the lawful corporate purposes of applicant, and that the property and funds to be derived from the issue of its capital stock, bonds and notes in the amount specified in the application filed herein and above set forth and the assumption of the bonded indebtedness of the Grand Rapids Gas Light Company and the Washtenaw Gas Company, is reasonably required for and essential to the lawful corporate purposes of said applicant and this Commission is satisfied that the property and funds to be derived therefrom are to be applied to the lawful corporate purposes of applicant: namely, for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement and maintenance of service, and the discharge or lawful refunding of its obligations, and that such issue of stocks, bonds, and notes and the amount thereof is essential to the successful carrying out of such purposes.

(j) That applicant has paid into the treasury of the state of Michigan the sum of $51,610.30, said amount being the fee payable to the state under the provisions of § 11 of Act 419, Public Acts of Michigan for the year 1919, and has filed a receipt of said treasurer therefor in the offices of the Commission.

GEORGIA COURT OF APPEALS, DIVISION NO. 2

Macon Gas Company

v.

Roy W. Crockett

[No. 26752.]

(— Ga. App. —, 198 S. E. 267.)

Service, § 190 — Extension — Refund agreement.

1. In a written contract by which a gas company lays an extension of its gas pipes along a certain street so as to convey gas to an owner of property on the street, in consideration of the property owner paying a designated sum of money to the gas company, and which provides that this extension shall remain the property of the company and that the company shall have the right to continue the extension to other property, a provision, where the contract is written and prepared by the gas company, that the company shall refund to the property owner a designated sum of money "for each

and every consumer taken on said extension," within a designated period from the date of the completion of the extension, provided the total amount of refund shall not exceed the total sum paid by the property owner for the construction of the extension, when properly construed, provides that a consumer of gas "taken on" the extension is any consumer of gas who receives it from this extension, whether directly by a service pipe attached thereto, or indirectly by a service pipe attached to a main or pipe running from the extension, p. 54.

Procedure, § 39 — Time limitation — Suit for refund — Extension contracts — Fraud.

2. Where consumers were taken on the extension by the gas company, and the property owner who had paid for the extension did not know, and by the exercise of ordinary diligence could not have known, that such consumers had been taken on because they were taken on by pipes attached to the extension and laid in the ground, and the gas company failed to give the property owner this information, and thereby kept him in ignorance of the fact that such consumers had been taken on the extension, the act of the gas company in thus failing to inform the property owner of the taking on of the consumers was a fraud which deterred the property owner from his action on the contract. The period of limitation within which the property owner could bring suit on the amount due under the contract by reason of the taking on of these consumers ran from the time when he afterwards ascertained that the consumers had been taken on the extension, and had therefore discovered the gas company's fraud, although at this date the period of limitation within which suit could be brought had otherwise not expired. The period of limitation began on the date of the discovery of the fraud, and a suit which was brought within the limitation period from that date to recover the amount due under the written contract by reason of these consumers being taken on was not barred by the statute of limitations, p. 55.

[July 15, 1938. Judgment adhered to on rehearing July 27, 1938.]

Headnotes by the COURT.

REVIEW *of judgment for plaintiff in action against gas company on contract relating to reimbursement of extension costs upon addition of other customers; affirmed.*

Roy W. Crockett brought suit, on May 15, 1937, against the Macon Gas Company, to recover for a breach of contract. The following appeared undisputed from the evidence: Crockett, who had a house on Ridge avenue in the city of Macon, being desirous of having the Macon Gas Company serve his house with gas, entered into a written contract on January 26, 1928, with the gas company, which was prepared by the company and presented to Crockett for signature, by which the gas company extended a gas pipe along Ridge avenue, a distance of 1,710 feet, to a point where Crockett's house was located, and by a service connection furnished gas to Crockett's house. In consideration for this Crockett paid the gas company the sum of $1,812.60, which represented the cost of making the extension. It was "agreed that this extension when and as made should be the property of the Macon

Gas Company, and said company shall have the right to continue said extension to other property," and that the gas company would refund to Crockett "the sum of $75 for each and every consumer taken on said extension within a period of four years [which was afterwards by agreement extended until July 1, 1934], from the date of completion of said extension, provided, however, that the total amount of refund shall not exceed the total amount paid," to the gas company by Crockett, namely $1,812.60 representing the cost of making the extension. Afterwards, a number of customers on Ridge avenue were connected with the extension, and for each one Crockett was paid $75. Afterwards, the gas company tapped the extension at two points before it reached Crockett's house, one at the intersection of Ridge avenue and Roycrest drive, and one at the intersection of Ridge avenue and Forest Hill avenue, by a gas pipe extending down Forest Hill avenue about 90 feet, and from which, at that point, a service pipe connected it with a house on that street, and by a gas pipe extending along Roycrest drive a distance of approximately 450 feet to its intersection with Drury avenue, a street running generally parallel to Ridge avenue, and continuing along Drury avenue for some distance. To this pipe, extending from the Crockett pipe on Ridge avenue along Roycrest drive and Drury avenue, one house on Roycrest drive and nine houses on Drury avenue were connected by service pipes. These connections made to the pipes which extended from the Crockett pipe were made within the life of the contract. Crockett contended that each one of these connections represented a "consumer taken on" his 1,710-foot extension, within the meaning of the contract, and that for each one the gas company was indebted to him in the sum of $75, making a total of $750, to recover which the suit was instituted. All of these connections, except the one made on Forest Hill avenue, were made more than six years before the date of the institution of the suit. These connections, all of which were made underground, were made by the gas company without Crockett's knowledge. They were made in the years 1928, 1929, and 1930. The gas company did not inform Crockett of the making of these connections, and he did not know of the mains or extensions made in Roycrest drive and Drury avenue until 1932, which was within six years of the date of the filing of the suit, which was May 15, 1937. The contract was not executed under seal.

The defendant in its plea denied liability, and pleaded the statute of limitations as against all the items sued for except the Forest Hill avenue item. A verdict in the sum of $750 with interest was directed for the plaintiff.

The motion of the defendant, Macon Gas Company, for a new trial, which was on the general grounds only, was overruled, and the defendant excepted.

APPEARANCES: Harris, Harris, Russell & Weaver, of Macon, for plaintiff in error; Turpin & Lane, of Macon, for defendant in error.

STEPHENS, P. J. (after stating the foregoing facts): 1. It is contended by the defendant, Macon Gas Company, that the items sued for are not re-

coverable as breaches of the contract between it and the plaintiff, Crockett. The defendant contends that under a proper construction of the contract the consumers of gas, by reason of the connections made on Forest Hill avenue, Roycrest drive, and Drury avenue, to the pipes which tapped and extended from the 1,710-foot Crockett extension on Ridge avenue, are not consumers "taken on" the Crockett extension on Ridge avenue, and that therefore the defendant is not, under the contract, liable to the plaintiff. The defendant contends that consumers of gas "taken on" the Crockett extension on Ridge avenue are only the consumers, such as those on Ridge avenue, who are connected with the Crockett extension directly by service pipes, and that consumers who are not directly connected to the Crockett extension, but who are connected by service pipes only with pipes or mains extending from the Crockett extension, such as the consumers on streets other than Ridge avenue, although the gas which they consume is served to them through the Crockett extension, are not consumers "taken on" by the Crockett extension. The plaintiff, on the other hand, contends that under a proper construction of the contract any consumer of gas, whether he receives it directly from the Crockett extension by service pipes attached thereto, or indirectly therefrom by service pipes attached to a main or extension tapping and running from the Crockett extension, and who therefore receives gas which is transmitted over the Crockett extension, is a consumer "taken on" the Crockett extension, and that, under the terms of the contract, the defendant gas company is liable to the plaintiff, Crockett, in the sum of $75 for each one of such consumers "taken on" during the life of the contract.

The contract provides that the gas company shall refund to Crockett $75 for "each and every consumer taken on said extension," meaning the gas pipe made and constructed by the gas company a distance of 1,710 feet along Ridge avenue, and extending to a point in the neighborhood of Crockett's house. This provision of the contract is as susceptible to the construction that the consumer referred to therein is a consumer on a street other than Ridge avenue, and who is furnished gas through a service pipe connected with a main pipe or extension running and extending from the Crockett extension along a street other than Ridge avenue, as to the construction that a consumer "taken on" the Crockett extension is only a consumer, such as a consumer on Ridge avenue, who is directly connected by a service pipe with the Crockett extension on that street.

[1] A written contract, where the meaning is doubtful, must be given that construction which is unfavorable to the party who prepares or writes the contract. Code, § 20–704 (5). The contract here was written by the defendant, gas company. It will therefore be given that construction favorable to the plaintiff, Crockett, namely that a consumer "taken on" the Crockett extension is any consumer whose gas comes to him through the Crockett extension, although he may not be directly connected with the Crockett extension, but is connected by a service pipe with a pipe or main tapping and extending from or conveying gas to

the consumer from the Crockett extension. Such consumers are those on Forest Hill avenue, Roycrest drive, and Drury avenue.

[2] 2. Giving the contract this construction, as we do, the plaintiff, since the evidence is uncontradicted, is entitled as a matter of law to recover the amount sued for, unless the plaintiff's cause of action as to any of the items sued for is barred by the statute of limitations.

The gas company had taken Crockett's money, which amounted to $1,812.60, under an agreement with him to refund a portion of it in the amount of $75 for each consumer taken on the Crockett extension. Whenever a consumer was taken on the gas company immediately became liable to Crockett, and it was its duty to pay Crockett the amount contracted to be paid. The taking on of a consumer was always within the knowledge of the gas company, but not necessarily within the knowledge of Crockett. Crockett necessarily had to rely on the good faith of the gas company to make payment to him whenever a consumer was taken on his extension. There was therefore a relationship between the parties in its nature fiduciary, by which the gas company owed a duty to Crockett to pay him for every consumer taken on his extension, notwithstanding Crockett may not be aware of the fact that a consumer was taken on. If the gas company did not immediately pay Crockett it certainly owed him a duty to inform him of the fact that a consumer had been taken on. The failure of the gas company to give Crockett this information and thereby concealing from him, where he did not know it, his right to call on the company for reimbursement according to the terms of the contract for a consumer taken on, amounted to a fraud on Crockett. This was such fraud as would prevent the running of the statute of limitations against Crockett and in favor of the company. "The concealment of a right by one whose duty it is to disclose it prevents the running of the statute of limitations in favor of the party in default. It is a legal fraud." Morris v. Johnstone (1931) 172 Ga. 598, 605, 158 S. E. 308, 312, citing Hoyle v. Jones (1866) 35 Ga. 40 (2), 44, 89 Am. Dec. 273. See Reeves v. Williams & Co. (1925) 160 Ga. 15 (1), 127 S. E. 293.

Under the contract, as this court construes it, the defendant gas company became liable to the plaintiff, Crockett, on account of the connections with the defendant's gas pipes or mains in the streets other than Ridge avenue. As these pipes and mains and the connections were made underground, and the plaintiff, as it appears from the uncontradicted evidence, did not know of these extensions, and could not know thereof without being extraordinarily alert or vigilant, a failure of the defendant gas company to inform the plaintiff of the defendant's taking on these customers by the laying of its pipes underground and thereby concealing such information from the plaintiff committed a fraud upon the plaintiff which could not have been discovered by the exercise of ordinary care and which deterred him in his action on the contract until after he discovered the fraud, although he discovered it within the period of limitation within which suit should have been brought had the

plaintiff's action not been barred by the defendant's fraud. The period of limitation runs only from the time of the discovery by the plaintiff of the fraud. Code, § 3–807. This, it appears from the uncontradicted evidence, was within six years of the institution of the suit. Since the statute of limitations applicable to an action on a written contract which is not under seal, as is the case with the contract here, is six years (Code, § 3–705), it appears conclusively and as a matter of law that the plaintiff's right of action was not barred by the statute of limitations.

The evidence demanded the verdict found for the plaintiff. The court therefore did not err in directing the verdict for the plaintiff, and in afterwards overruling the defendant's motion for new trial.

Judgment affirmed.

Sutton and Felton, JJ., concur.

COLORADO PUBLIC UTILITIES COMMISSION

Re Uniform System of Accounts for Electric and Gas Utilities

[Case No. 4693, Decision No. 12481.]

Depreciation, § 28 — Straight-line or retirement basis.

1. The straight-line depreciation basis permits of better regulation on the part of the Commission than the retirement basis and at the same time is fair to the operating utilities, p. 58.

Accounting, § 8 — Capital account — Original cost — Definition.

2. The definition of original cost as used in the Uniform System of Accounts recommended by the National Association of Railroad and Utilities Commissioners should not be changed to mean the cost of property to the accounting utility, since such change would not be conducive to obtaining the information necessary for a regulatory Commission; and there should not be eliminated from such system of accounts the accounts "Utility Plant Acquisition Adjustments," "Utility Plant in Process of Reclassification," and "Utility Plant Adjustments," p. 58.

Accounting, § 6 — Uniform system.

3. The Uniform System of Accounts recommended by the National Association of Railroad and Utilities Commissioners for gas and electric utilities should be adopted with minor amendments and modification, p. 58.

[October 19, 1938.]

INVESTIGATION *of question of adopting uniform system of accounts for electric and gas utilities; system of accounts adopted.*

APPEARANCES: W. C. Loss, C. L. Flower, and James J. Patterson, Denver, for the Commission; Lee, Shaw and McCreery, W. A. Bryans III, and J. Loiseau, Denver, for Public Service Company of Colorado; Worth Allen, Denver, and Charles C. Baker, Golden, for Colorado Central Power Company; Durbin Van Law, Denver, for Roaring Fork Light & Power Company; E. T. Snyder, Greeley, for The Home Gas & Electric Company; E. L. Mosley and S. McFarland, Colorado Springs, for the city of Colorado Springs; W. C. Sterne and Harry Adler, Denver, for the Arvada Electric Company; R. H. Jones, Salt Lake City, Utah, for Western Colorado Power Company; Ray Smith, Loveland, for the city of Loveland; C. C. Church, Lamar, for city of Lamar; E. B. Shepherd, Fort Morgan, for city of Fort Morgan; G. H. Palmer, Fort Collins, for city of Fort Collins.

By the COMMISSION: On May 2, 1938, after due notice to all operating gas and electric utilities, both private and municipal, within this state, a hearing was held by the Commission pursuant to order issued March 30, 1938, for the purpose of considering the advisability of adopting the Uniform System of Accounts for gas and electric utilities heretofore recommended by the National Association of Railroad and Utilities Commissioners to the various state Commissions for adoption.

At said hearing, evidence was introduced by members of the auditing and engineering staff of the Commission, as well as on behalf of a number of the Colorado operating utilities. At the close of the testimony, it was recommended to the Commission that a committee be appointed to fully investigate the situation and, after consultation with the auditing and engineering departments of the Commission, to make its recommendation to the Commission as to what steps should be taken in Colorado.

Thereafter, such a committee was appointed which has prepared and filed with the Commission its report. Said report recommends generally that the National Association's classification be adopted for both gas and electric utilities with the following modifications and exceptions, viz.:

Definitions

"Depreciation"—Item 13—Page 3—Electric.

There is hereby added to the definition of "Depreciation" the following: "(The accounting utility may elect to apply the retirement or straight-line basis of depreciation. Upon such election, the accounting utility may not change to any other basis except upon the approval of the Commission.)"

"Original Cost" —Item 26—Page 4—Electric.

The definition of "original cost" is hereby changed to the following: "Original cost" as applied to utility plant, means the cost of such property to the accounting utility.

Balance Sheet Accounts

"Balance Sheet Accounts"—Page 19—Electric.

Those features relating to past accounting and the reclassification of plant, with instructions applicable

thereto, and their effects on other accounts, are hereby made ineffective, and the following balance sheet accounts are expressly eliminated: 100–5.—Utility Plant Acquisition Adjustments; 100–6.—Utility Plant in Process of Reclassification; 107—Utility Plant Adjustments.

The committee recommended the same modifications for gas utilities.

Since receiving report of said committee, the Commission has had numerous consultations with its auditing and engineering staff, who have advised us that in their opinion no changes or modifications should be made in the Uniform System of Accounts as adopted by the National Association. The Commission appreciates the thoroughness and lucidity of the report made by the committee which it appointed, and desires to express their appreciation for the evident desire of the members thereof to be of aid and assistance to the Commission. The oral evidence submitted to the Commission at the hearing by operating utilities was somewhat in line with the report finally made to us by said committee. Said evidence also disclosed that up to the time of the hearing, some nineteen states had adopted the National Association's classification for electric utilities and fourteen had adopted the Federal Power Commission's classification. It was also developed that little difference exists between the two forms of classification. All parties agreed that, due to the unsatisfactory and conflicting situation existing in Colorado, a new uniform system of accounts should be prescribed by the Commission. The question is raised that Colorado, unlike most other states, has divided the regulatory authority, due to the existence of "home rule" cities, and it was brought out that in the case of the Public Service Company 81 per cent of its customers reside in "home rule" cities, producing 74 per cent of its revenue, as compared with 19 per cent, producing 26 per cent of its revenue, residing in territory under our jurisdiction.

[1] Upon the question of depreciation, the National Association's classification does not attempt to prescribe the basis that shall be used, but merely gives a definition of what causes shall be given consideration. The committee recommended that the operating utility should have the election whether to provide retirement of straight-line basis of depreciation. However, in the opinion of the Commission, the straight-line basis permits of better regulation on the part of the Commission and at the same time is fair to the operating utility.

[2] As to the question of original cost, the committee recommends that the definition of same be changed to mean the cost of such properties to the accounting utility. However, in the opinion of the Commission, such change would not be conducive to obtaining the information necessary for a regulatory Commission, and we have the same feeling in connection with the objections raised by the committee to the three account numbers designated as 100–5, 100–6, and 107.

[3] The National Association classification gives the utilities two years from the effective date of the adoption of said classification by any state Commission, in which to obtain as far as possible the necessary information required as to original cost,

and while we realized that in some instances such information may be unobtainable, and that certain plant accounts could only be broken down at a prohibitive cost, yet the jurisdiction of the Commission over such matters is a continuing one and at all times we would be prepared to give relief in such instances as we deemed proper where the matters are properly called to our attention. We are inclined to give considerable weight to the recommendations of the National Association, whose committee only acted after extensive study and many conferences.

After a careful consideration of the record, the Commission is of the opinion, and so finds, that, except as hereinafter amended and modified, the Uniform System of Accounts for both electric and gas utilities recommended by the National Association of Railroad and Utilities Commissioners should be adopted for application in Colorado.

ORDER

It is therefore *ordered,* that under and by virtue of the laws of the state of Colorado relative to public utilities, including municipally owned or operated utilities serving customers as public utilities outside of the corporate boundaries of such municipalities, the Uniform System of Accounts for Electric Utilities, as adopted by said National Association at its 1936 annual convention held in Atlantic City, New Jersey, November 10–13, 1936, and as fully set forth and described in a pamphlet identified and designated as "Uniform System of Accounts for Electric Utilities, Copyright 1937 by National Association of Railroad and Utilities Commissioners," said pamphlet and all its contents referred to herein being hereto attached and made a part hereof, be, and the same is hereby, established and prescribed as the system of accounts to be kept and used by each and all of said electric utilities operating in the state of Colorado, with the following modifications and amendments which the Commission believes to be in the public interest, to wit:

1. *Definition*

"Depreciation"—Item 13—Page 3—Electric.

There is hereby added to the definition of "depreciation" the following:

The accounting utility shall apply the straight-line basis of depreciation.

2. *Classification of Utilities*

—Paragraph (a) found in Appendix A on page 187, under Class D utilities shall be amended to read as follows:

Class D utilities shall embrace utilities having annual electric operating revenues of not more than $100,000.

It is *further ordered,* that the Uniform System of Accounts for Gas Utilities (Classes A and B) adopted by the National Association of Railroad and Utilities Commissioners at its 1936 annual convention held in Atlantic City, New Jersey, November 10–13, 1936, and as fully set forth and described in a pamphlet identified and designated as "Uniform System of Accounts for Gas Utilities, Copyright 1937 by National Association of Railroad and Utilities Commis-

sioners," said pamphlet and all its contents being referred to herein, and hereto attached and made a part hereof, including those revisions adopted by the National Association at its 1937 convention held in Salt Lake City, Utah, on August 31 to September 3, 1937, be, and the same is, hereby established and prescribed as a system of accounts to be kept and used by each and all of said gas utilities operating in the state of Colorado, who come within said Classes A and B, with the following modification and amendment which the Commission believes to be in the public interest to wit:

1. *Definition*

"Depreciation"—Item 14—Page 3—Gas.

There is hereby added to the definition of "depreciation" the following:

The accounting utility shall apply the straight-line basis of depreciation.

It is *further ordered,* that each such utility shall carry on its books the accounts and records herein prescribed for such utility, and shall accurately keep such accounts in accordance with the requirements, definitions and instructions contained and set out in said Uniform System of Accounts.

It is *further ordered,* that this order shall take effect on January 1, 1939, and shall continue in force until suspended, modified, or set aside by this Commission, provided, however, that said classification may be used by either electric or gas utilities so desiring from January 1, 1938.

It is *further ordered,* that this order shall supersede, vacate, and set aside all former orders of the Commission relative to said matters herein involved.

SECURITIES AND EXCHANGE COMMISSION

Re Utilities Employees Securities Company et al.

[File Nos. 31-419, 60-1.]

Parties, § 19 — Intervention — Labor union — Representative of security holders.

A labor union representing local labor unions whose membership is composed of a substantial number of employees of certain operating companies of a holding company system, which employees are subscribers to the securities of affiliated corporations involved in proceedings to determine the status of such corporations as affiliates in the system, should be permitted to intervene in these proceedings as a representative of interested security holders.

[September 15, 1938.]

PETITION *by labor union for permission to intervene in proceedings relating to the determination of the status of certain corporations as affiliates; intervention permitted.*

By the COMMISSION: The Gas, By-Product Coke & Chemical Workers, District No. 50 of the United Mine Workers of America has filed a petition to intervene in the above-entitled proceedings which heretofore have been consolidated for the purpose of hearings thereon. These proceedings are in regard to an application filed by Utilities Employees Securities Company pursuant to § 2 (a) (8) of the Public Utility Holding Company Act of 1935 for an order declaring said company and its subsidiary company, New England Capital Corporation, not to be subsidiary companies of certain specified companies (File No. 31–419), and in regard to a proceeding ordered by the Commission to be held pursuant to § 2 (a) (11) (D) of the act to determine whether Utilities Employees Securities Company and New England Capital Corporation are affiliates of such specified companies and of other companies (File No. 60–1).

Utilities Employees Securities Company and New England Capital Corporation at a hearing in regard to these matters held on September 15, 1938, objected to the intervention of the named party; and oral argument on behalf of the objecting companies and on behalf of the petitioner has been heard by this Commission.

This petition to intervene is governed by § 19 of the act (15 USCA § 79s) which provides: "In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, . . . may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers."

Rule XVII of the Rules of Practice of the Securities and Exchange Commission provides "Any person upon proper showing of sufficient interest in the subject matter may, upon application in writing to the Commission duly made, be allowed to intervene in any proceeding upon such terms and conditions as the Commission may prescribe."

It appears that the petitioner represents certain local labor unions [1] whose membership is composed of a substantial number [2] of employees of certain operating companies [3] of the Associated Gas and Electric System. Furthermore, it appears that such employees are subscribers to the securities of Utilities Employees Securities Company and/or New England Capital Corporation.

On September 15, 1938, the Commission announced its decision to permit petitioner to intervene in these proceedings as a representative of interested security holders.

Subsequently counsel for the intervenor brought to the attention of the staff of the Commission the fact that certain representations (relating to what purported to be a union contract) made by said counsel at the hearing

[1] The authorization of the petitioner by the local unions was not questioned by the opposing companies.

[2] The number of such employees is estimated by counsel for the petitioner to be approximately 500, while counsel for the opposing companies states the number of such employees to be 134.

[3] The Portsmouth Gas Company, Indiana Gas Utilities Company, Worcester Gas Company, Cambridge Gas Company.

before the Commission on September 15, 1938, had been discovered by him to be incorrect. Thereafter, on October 4, 1938, the intervenor filed with the Commission a petition to correct the evidence relating to its right to intervene in these proceedings. Following a request by counsel for Utilities Employees Securities Company and New England Capital Corporation for an opportunity to be heard regarding said petition, oral argument thereon was held before a trial examiner on October 18, 1938.

The Commission has considered the argument made and the evidence submitted at the said hearing, but is of the opinion that the basic facts upon which the Commission heretofore determined the petitioner's right to intervene are not therein disputed. No motion to revoke the permission to intervene in these proceedings has been made by Utilities Employees Securities Company or New England Capital Corporation, and the sole question before the Commission is as to the petitioning union's original right to intervene in view of the corrected record.

Since indirectly the intervening union represents members of the public who are investors in the securities of Utilities Employees Securities Company and/or New England Capital Corporation, and since this Commission is solicitous that these proceedings be so conducted that all pertinent points of view receive consideration and that investors be given an opportunity to protect their interests, the announced decision of the Commission permitting intervention by the petitioner will be affirmed.

ORDER

The Gas, By-Product Coke and Chemical Workers, District No. 50 of the United Mine Workers of America having filed a petition to intervene in the above-entitled proceedings which heretofore have been consolidated for the purpose of hearings thereon; Utilities Employees Securities Company and New England Capital Corporation having objected to such intervention; oral argument on behalf of the companies and on behalf of the petitioner having been heard by the Commission; and the Commission having considered the merits of the plea of intervention and objections thereto, and having found that the petitioner is a representative of interested security holders with an interest in the subject matter of these proceedings,

It is *ordered*, that the plea of intervention be granted and that Gas, By-Product Coke and Chemical Workers, District No. 50 of the United Mine Workers of America be admitted as a party to these proceedings.

COLORADO PUBLIC UTILITIES COMMISSION

Re Wildon Beach

[Application No. 962-AA, Decision No. 12358.]

Certificates of convenience and necessity, § 25 — Disputed claims — Transfer — Jurisdiction.

1. A disputed claim in the case of a transfer of a certificate of convenience and necessity should be adjudicated by a tribunal other than the Commission, p. 64.

Certificates of convenience and necessity, § 1 — Claims of ownership — Noncompliance with rules.

2. The Commission recognizes no claim of ownership of a certificate of convenience and necessity where the rules and regulations governing motor vehicle carriers have not been complied with, p. 64.

[September 13, 1938.]

APPLICATION *for rehearing of proceeding granting authority for the transfer of a certificate of convenience and necessity; denied.*

APPEARANCES: Wildon Beach, Eads, *pro se*; A. J. Fregeau, Denver, for Weicker Transfer and Storage Company and for C. G. Finney; Frank Miller, Denver, for Denver-Limon-Burlington Transportation Company; Marion F. Jones, Denver, for The Colorado Trucking Asso.; Zene D. Bohrer, Denver, for The Motor Truck Common Carriers' Association; Geo. H. Swerer, Denver, for Frank W. Miller, protestant.

By the COMMISSION: On August 25, 1938, Decision No. 12274, the Commission granted authority for the transfer of Certificate No. 306. On August 29, 1938, George H. Swerer, attorney at law, Denver, Colorado, filed an application for rehearing on behalf of Frank W. Miller.

A number of assignments of error are set forth in the petition, particularly that the application does not meet the requirements of the rules and regulations of the Commission in that it did not contain a statement of the names and addresses of creditors; that a sworn statement disclosing the assets and liabilities of the transferee was not made part of the application; that the application did not disclose the entire consideration to be paid; that the petitioner presented a claim which entitled him to one-half interest in Certificate No. 306; and that the Commission's failure to recognize the contract or claim of petitioner to a one-half interest in said certificate, places the Commission in the position of supporting an unlawful breach of contract, and that if this decision be-

comes final it will result in injury to F. W. Miller.

The objections to the sufficiency of the application should have been made at an earlier date and not assigned as reasons for a rehearing. It is quite true that the Commission does prescribe rules and regulations to control transfer proceedings. However our requirements as to contents of application for leave to transfer frequently are waived by the Commission when it is apparent that a sufficient record can be made and the true status of an application ascertained without being technical and requiring the applicant to employ skilled help or in some instances retain an attorney in order to meet the strict provisions of rules.

[1] The Commission has held in the case of a transfer, that a disputed claim should be adjudicated by a tribunal other than the Commission, and where parties appearing are unable to agree, such disputed matters are invariably left for the courts to adjudicate. It seems, in the instant case, that a suit in law or equity should have been and perhaps still may be instituted by Miller against Beach or Beach and Finney in a court of competent jurisdiction to have his claim adjudicated.

[2] Intervenors as permitted to appear at transfer hearings primarily for the purpose of giving such information as they may have, touching the subject of the transfer and such appearances sometime furnish material assistance to the Commission. So far as our records disclose Beach is the owner of the certificate in question unencumbered by liens or claims of Miller, or any one. The claim he sought to urge at the hearing is stale to say the least and assuredly we recognize no claims of ownership where our rules (Rule 6 of Rules and Regulations Governing Motor Vehicle Carriers) have not been complied with. If Miller had proceeded as required by our rules, he would long since have settled his rights, if any, in and to the certificate.

After careful consideration of the application for rehearing and each of the assignments of error therein set forth, the Commission is of the opinion and finds that the application for authority to transfer filed herein, while not strictly in form provided by rules and regulations of the Commission, is sufficient for all purposes of this transfer especially when considered in connection with the testimony given at the hearing; that the instant application to transfer being the first presented involving this certificate, merits the action taken; that the financial standing and qualifications of the transferee were established to the satisfaction of the Commission; and that the petition for rehearing should be denied.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

Commonwealth Edison Plans Expansion of Plants

CAPITAL expenditures totaling approximately $75,000,000 are being contemplated by the Commonwealth Edison Company group over the next two years, according to James Simpson, chairman.

"With confidence in the future of Chicago and the surrounding outlying area," Mr. Simpson said, "it is estimated that in the next two years $75,000,000 in capital expenditures may be necessary to meet increasing demand."

New Package For Anyheet Control

THE Silex Company has redesigned the package for Anyheet Control, the ingenious device that keeps coffee at drinking temperature indefinitely without loss of flavor.

The new package is of sparkling silver foil printed in red, blue and white. It gets its message across quickly by saying "Dial your heat. Silex Anyheet Control keeps coffee at any heat."

All owners of recent electric models Silex Glass Coffee Makers with regular cord sets are prospects for Anyheet Control. By packing it in attractive counter or window display cartons—these prospects will be reminded to buy.

For complete information about Anyheet Controls packed in these new cartons, write directly to The Silex Company, Hartford, Connecticut.

Combustion Engineering Issues Catalog on Pulverized Coal

"C-E Direct Fired Systems for Burning Pulverized Coal" is the title of a new 36-page catalog issued by Combustion Engineering Company, Inc., 200 Madison Ave., New York City. It contains a synopsis of the development of pulverized coal firing and its influence on the capacities and designs of steam generating units. The section on mills describes both the impact and the bowl mill types for direct firing. That on burners deals with tangential dorner firing, vertical firing and horizontal turbulent burners. Mill feeders are also described and furnaces for burning pulverized coal are discussed. The 53 illustrations include details of mills, feeders, burners and numerous installation views.

Duke Power Co. to Build New Steam Power Plants

DUKE Power Company is planning to start building soon the first of several steam power plants to meet the demands of industrial growth in its territory, according to C. I. Burkholder, vice-president and chief engineer.

The new plant is to be the second largest in the Duke system. The several steam plants, it is estimated, will cost more than $1,000,000 each.

Burroughs Announces Selective Column Form Writing Machine

AN electric carriage Form Writing Machine with selective tabulation has recently been announced by Burroughs Adding Machine Co. Especially designed for use by public utilities, wholesalers, jobbers, banks, manufacturers, insurance companies, finance companies, investment and brokerage houses, and all types of retailers, the new unit is known as the Burroughs Selective-Column Form Writing Machine.

By permitting the operator to tabulate directly to any desired column on the form merely by depressing the key which selects

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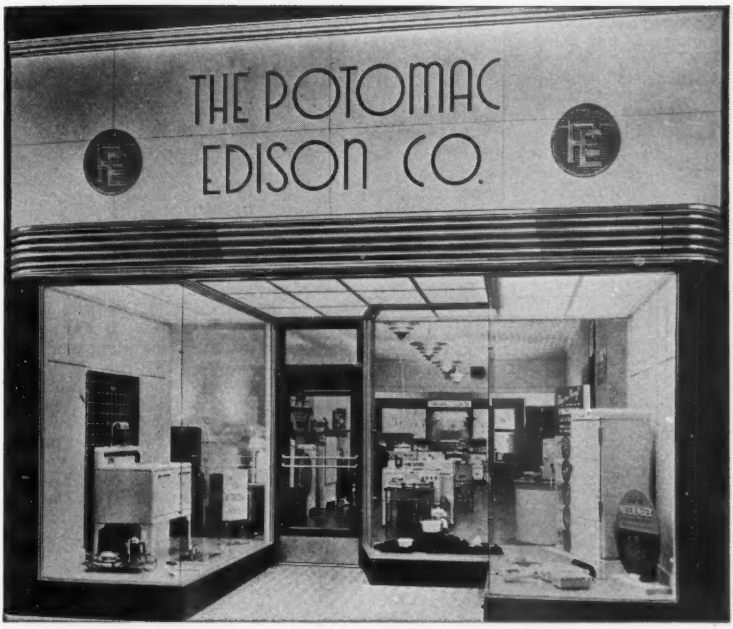

Here's how Architect Geo. F. Sansbury and the Potomac Edison Company convince the merchants and property owners of Cumberland, Md., of the value of brightly lighted stores.

modern store front demands modern illumina-. And modern illumination means a heavier ting load. There's a natural tie-up if there was one . . . new Pittco Store Fronts and dern lighting.

to take best advantage of this tie-up . . . to vince prospects in your community of the sound- of store front modernization with better light- . . . there's nothing more valuable than an al example . . . on your own show rooms . . . ust what you mean.

talk to a merchant . . . tell him the need for dern merchandising methods . . . plug away on idea of a new store front with better lighting. to clinch the argument, you say "Look at our quarters down the street. There's a new t . . . illuminated in the modern manner. We practice what we preach . . . because we know it means better business!"

Put a new Pittco Front on your utility show rooms. Make them an example of what you preach. And when the Pittco Store Front Caravan, sponsored by Pittsburgh Plate Glass Company, comes to your territory, don't miss it. It shows you numerous actual examples of modern store front lighting. It offers you an opportunity to cooperate with a promotional effort that leads directly to more business for you. Contact our local branch for data about the Caravan . . . and for any cooperation on store fronts you may need in your work.

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that column, selective tabulation simplifies and speeds the writing of "size" column invoices, financial and statistical reports, sales and purchase distribution, and payroll distribution sheets.

When equipped with a front-feed chute, the machine is readily adaptable for writing utility bills, registering checks and drafts, delinquent notices, meter connect and disconnect orders, premium notices, and other similar forms. Insertion of these smaller, original forms does not disturb the journal, register, or distribution sheet which remains in the machine.

Through use of continuous forms on which progressive sizes or other classifications have been pre-printed as column headings, the number of key strokes required to write the body of an invoice is cut approximately in half. With the additional advantage of column selection, an extremely fast, efficient operation results.

The new Burroughs machine may be equipped with a form holder which rides with the carriage, eliminating side-pull on continuous forms, and assuring better registration and neater results. Unit forms may be used equally well if preferred.

Carriage movement from left to right is controlled by the electric carriage return key, which provides a full return or partial return (reverse tabulation) to an intermediate position. This permits unusually fast, short-line writing, since a mere touch of the return key immediately spaces the paper and locates the new writing position. The machine is available in varied carriage widths up to and including twenty-six inches.

G-E Promotes O'Brien In Central Station Department

W. V. O'BRIEN has been appointed assistant to the manager of the Lighting and Cable Division of the Central Station Department, General Electric Company, Schenectady, N. Y., according to a recent announcement by F. H. Winkley, manager of the division. The promotion transfers O'Brien from the Customer Division of the Central Station Department.

Black & Decker Announces 1939 Catalog

THE 1939 Black and Decker catalog, now ready for distribution, features a complete line of quality portable electric tools and accessories.

This new catalog comprises 56 pages and cover and attractively displays the Black & Decker line. Many new improvements in design and construction have been incorporated into many of the familiar units in the line and a number of new tools have been added.

Of particular interest are the following new units described in the new catalog: the new 3/16 inch Hornet Drill, the smallest and lightest weight production drill ever offered on the American market, according to the manufacturer; the new 5/16 inch Ball Bearing Utility Drill; and the new No. 36 Portable Electric Hammer.

These three new tools, together with the Holgun and Scrugun and other tools announced during the year, give the most complete and most up-to-date line that Black & Decker has ever offered.

Copies of the catalog may be secured direct from the manufacturer.

Baltimore Utility Installing New Units

THE Consolidated Gas, Electric Light and Power Company of Baltimore has recently let contracts for equipment to top a portion of its Westport Station. The installation will consist of two Combustion Engineering high-pressure boilers of the three-drum bent-tube type supplying steam at 1325 lbs., 915 F, at the superheater outlet, to a 25,000-kw. G. E. turbine-generator exhausting to the present 200-lb. turbines. An extension to the present building will house the new equipment.

The new steam generating units will be designed for a maximum rating of 313,000 lb. of steam per hour, with feedwater at 330 F, or 330,000 lb. with feedwater at 383 F. Each unit will be fired by four Type R horizontal turbulent burners receiving pulverized coal, through independent feeders, from two CE-Raymond bowl mills. The furnaces will be completely water cooled and have bottoms of the V-shape dry type. Continuous, fin-tube economizers and Ljungstrom air preheaters will be employed.

G-E Publications

THE following publications have just been issued by the General Electric Company: GEA-594B "G-E Automatic Control Panels for Industrial Electric Heating"; GEA-2964 "A Full-Voltage Magnetic Motor Starter"; GEA-2985 "The Improved Station-type Induction Regulator"; GEA-1993E "Enclosed Indicating and Dropout Fuse Cutouts"; GEA-3085 "Spirakore Distribution Transformers"; GEA-3046 "Phasing-Out Voltmeter"; GEA-2038 "The G-E Spirakore Transformer"; and GEA-2872 "What Every Plant Operator Should Know about Metal-enclosed Switchgear."

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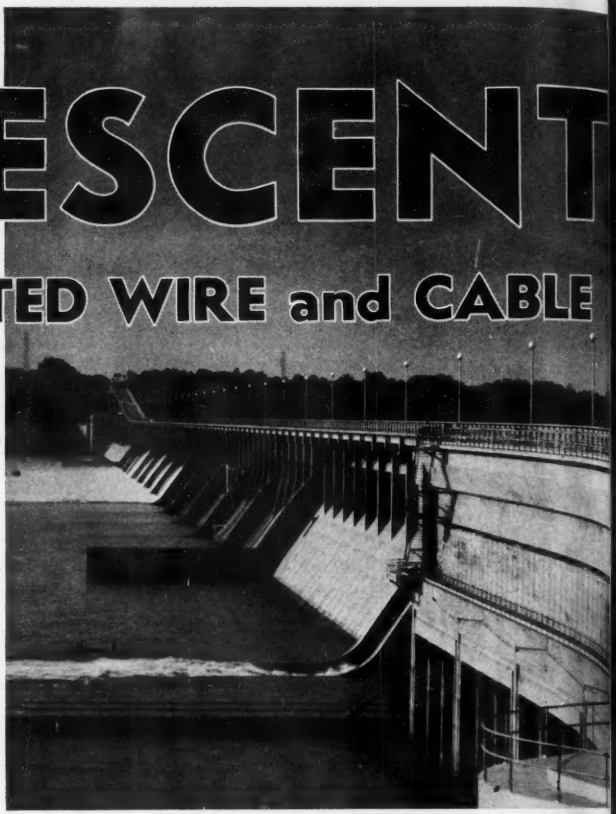

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The new "Eveready" Safety Flashlights are of high quality semi-hard rubber reinforced with brass, with unbreakable, plastic lenses, special protected lamp and hand-replaceable, heavy-duty slide switch with positive "off" and "on" positions. Hexagonal heads prevent rolling, ring-hangers add to convenience.

"Eveready" Safety Flashlights resist water, oils, greases, gasoline, alcohol, acids, alkali, are non-conducting and proof against impact and dropping.

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Characterized by impartial observers as the greatest forward step in mechanical firing in the last ten years, Stowe Stokers are the obvious first choice for new boiler and modernization projects. Write for a full description and the illustrated catalog. It will pay you to investigate Stowe Stokers' possibilities for your plant!

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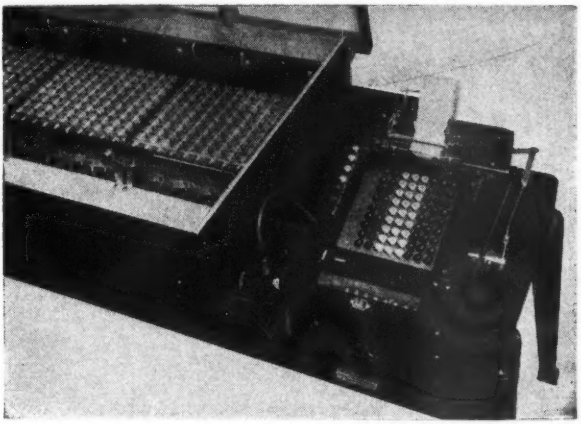

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TEN years ago power company engineers knew that oil-filled cable could solve the problem of reliable high-voltage underground transmission. It could provide better service to heavily populated areas. But, as one engineer said, "Oil-filled cable is good only as far as it goes—as far as *one length* goes. Every time we have to make a joint, up go its costs!"

Today, lower-cost, more reliable underground transmission has been achieved. More than a thousand miles of oil-filled cable are now in service. Behind their installation lies the story of remarkable progress in the design and manufacture of cable-jointing equipment.

This progress is well illustrated by the fact that a stop-joint manhole for 132-kv cable today costs approximately $4500—including jointing materials and the cost of the manhole—as against approximately $12,000 [for] manhole 10 years ago. A saving of $7500 [on] every stop joint!

Such reductions are encouraging a wide[r use] of oil-filled cable by lowering the voltage [at] which it is economically justified. The cost [of] installation—and the time required to [com]plete installation—have both been reduced by the improved design and smaller size of joints and reservoirs. In addition, the manhole space has been cut to one-third the [space] formerly required.

And engineers are working to make cable [and] cable-joint equipment even better—and less expensive. This continuing work is [one] of the "extra" benefits that result from [plac]ing your business with progressive manufacturers.

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